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ABSTRACT

An introduction to the role of the paralegal in the free world, the inmate as paralegal, legal service needs, and program planning are included along with guidelines for the training of inmates as paralegals. Paralegal services, legal problems, and legal services are extensively defined. The legal problems of inmates and methods of providing legal services other than through paralegal inmates are discussed. A number of models of inmate paralegal programs as well as descriptions of some major programs in this country are presented, and resources necessary for setting up training programs are discussed. Guidelines for trainers in the design of training programs for paralegals are included, emphasizing legal vocabulary, question and answer--anecdotal, and skills development. Trainee recruitment and techniques for teaching inmate paralegals how to state a claim, basic mechanical procedures, and constitutional law governing institutional life are also covered. Major curriculum issues that need to be explored in designing any training program are also discussed. (Author/MBR)

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Inmate Involvement in Prison Legal Services: Roles and Training Options for the Inmate as Paralegal

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American Bar Association
Commission on Correctional Facilities and Services

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PREFACE

This text is designed principally for correctional administrators. It is a manual on one aspect of the broad topic of legal services for inmates: roles for inmates in institutional legal service programs. No representation is made that a legal service program relying on inmates for the provision of legal services is an adequate answer to the problems of delivering legal services to inmates. The trained inmate as a provider of legal services in institutions in but one option available to administrators to be considered along with the availability of law students, lawyers, line correctional staff and others.*

The text is divided into two parts. Part One is an introduction to the paralegal in the free world, to the inmate as paralegal, to legal service needs and to program planning. Part Two is devoted totally to the training of inmates to become participants in the legal service programs discussed in Part One. The training chapters are not self-executing; they are guidelines for trainers in the design of curricula.

Criminal justice planners and bar groups can glean from these materials the principle of sound programming in these areas. We hope they will do so, and that they will work cooperatively to increase the availability of legal services for prisoners.

We are indebted to Professor William P. Statsky of the Antioch School of Law for drawing together his experiences and those of others who have been involved in the paralegal field. This report has been enriched by the field testing which the ideas presented have received.

Melvin T. Axilbund
Project Director

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*See American Bar Association, Resource Center on Correctional Law and Legal Services, Providing Legal Services to Prisoners: An Analysis and Report (May, 1973). See also Wexler, D. Cases and Materials on Prison Inmate Legal Assistance (National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, 1973).

CHAPTER ONE

INTRODUCTION

Recently, Superintendents Nelson and Park of San Quentin made the following observation:

> *"There was a time, considered by some prison wardens as 'the good old days,' when lawyers were very scarce in or about State prisons."**

There is no doubt that in the minds of many correctional administrators and line personnel, lawyers, courts, judges, the law and legal services are viewed with suspicion. Superintendents Nelson and Park are indeed correct when they say that lawyers at one time had a minimal involvement with correctional institutions. Their comment applies equally well to the entire legal system. A change has occurred. The attention of the legal system is now intensely focused upon corrections. From the Chief Justice of the United States Supreme Court to the first year law student, many are asking what role the legal system has in the events of a defendant's life after he has been convicted, sentenced, and institutionalized. The problem has been that there are proponents of change who are long on solutions but short on understanding and implementation. Corrections personnel are validly suspicious of those who talk glibly about reform and about the role of lawyers and the legal system in bringing about reform when these advocates fail to make a convincing case that they have comprehended the complexities of the penal process, of correctional administration and of the inmate-staff relationship.

Amid all the confusion, one fact is clear: the relationship between the legal system and corrections is still unfolding, and corrections personnel, therefore, have the opportunity to take the initiative in helping to mold that relationship. It is submitted that the least effective course of action for corrections to take would be to wait until the courts order change to occur. A more

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*L.S. Nelson and J.W.L. Park, "Wardens and Attorneys," Case & Comment, p. 37, (Jan. - Feb., 1973).

positive orientation would be appropriate. The purpose of this text is to propose options for correctional administrators to develop such an orientation in the area of legal services to inmates. Specifically, our concern is as follows:

> Consistent with the duty of corrections to maintain institutions effectively and economically, what roles can inmates play in assisting themselves and each other in obtaining legal services?

From this central question, a number of subsidiary issues need to be treated:

1. *What do we mean by legal services?*
2. *What is a paralegal and what functions has he performed outside the institutions?*
3. *What roles have inmates been playing within the state and Federal correctional institutions in the area of legal services?*
4. *What problems have correctional administrators had to face in permitting inmates to undertake these roles?*
5. *How have these problems been solved?*
6. *Where, if at all, does the "jailhouse lawyer" fit into the picture of inmate legal service?*
7. *What resources, e.g., personnel, space, funding, are necessary to implement a legal service program involving inmates?*
8. *Where can these resources be obtained?*
9. *What is the view of the bar associations on the utilization of inmate personnel in institutional legal service programs? Is it legal for inmates to help other inmates with their legal problems?*
10. *How are inmates to be trained?*
11. *Can inmate training be part of vocational training for purposes of obtaining employment upon release as paralegals?*

12. *How is the work of inmates to be supervised?*

13. *How can correctional administrators evaluate the effectiveness of a legal service program involving inmates?*

PART ONE

ROLES FOR INMATES IN INSTITUTIONAL LEGAL SERVICE PROGRAMS

CHAPTER TWO

WHAT IS A PARALEGAL?

Within the last ten years, a major development has been occurring within the legal profession. The paralegal has emerged as a significant participant in our society's system of delivering legal services to the public. A paralegal is an individual skilled in providing legal services. He is not an attorney, but he performs tasks that lawyers normally undertake.

The concept of the paraprofessional is not new. Other professions and occupations have developed personnel in this area. A few are mentioned here:

MEDICINE	:	nurse, practical nurse, mental health aide, physician's assistant, laboratory assistant, record technician, etc.
DENTISTRY	:	dental hygienist, dental assistant, laboratory technician, etc.
CORRECTIONS	:	parole aide, probation aide, etc.
EDUCATION	:	teacher aide, paraprofessional teacher, etc.
SOCIAL WORK	:	social work technician, social work aide, etc.
LAW ENFORCEMENT	:	police cadet, etc.

The "New Careers" movement that has produced this range of workers has been based on several fundamental principles that have proven to be valid in practice:

1) People in these fields are overextended and overworked.
2) There are a great many tasks within professions and occupations that can be performed effectively by individuals whose

training is less than what is normally required.

3) There is a need to re-think the entry-line requirements for professions and occupations.

The legal profession has been slower than other fields in recognizing these truths. Bar associations, law schools, and institutions relating to the law generally have been extensively involved, however, in recent times. There is every reason to believe that the paralegal will help to reshape the entire system of delivering legal services.

It is not necessary, under the law, for all paralegals to work side-by-side with lawyers. Paralegals are not glorified legal secretaries; they are not messenger boys. Their authority to act is derived from three sources, only one of which requires constant, event-by-event supervision by a lawyer:

A. AGENCY AUTHORITY: Numerous administrative agencies do not require attorneys to represent clients before their proceedings. For example, social security, unemployment insurance and welfare agencies often have hearings where laymen can represent clients. In such instances, the government has said that lawyers do not have a monopoly over client representation.

B. SPECIAL AUTHORITY: Inmates have been granted a special authority from the courts to assist other inmates in preparing legal papers in connection with their court cases. This authority applies primarily when there are no other effective ways in which an inmate can receive assistance. See, for example the United States Supreme Court cases of Johnson v. Avery 393 U.S. 483 (1967) and Younger v. Gilmore 404 U.S. 15 (1971).

C. LAWYER AUTHORITY: Separate from the above two sources of authority is the additional authority derived from the supervision of a lawyer. A paralegal can perform legal tasks when he receives lawyer supervision on these tasks.

What then, have paralegals been doing under these three sources of authority. A very incomplete listing would include:

Legal research
Drafting complaints
Drafting court petitions
Drafting orders to show cause
Drafting leases
Drafting estate plans
Drafting incorporation papers
Representing clients at agencies

For a comprehensive study of what paralegals have been doing in twenty-seven areas of the law (e.g., consumer law, criminal law, divorce law, draft law, corporate law, immigration law, real estate law, etc.) see Statsky, W. What Have Paralegals Done?: A Dictionary of Functions (National Paralegal Institute, 1973).

The range of training programs that have permitted paralegals to perform these tasks has been varied. In an overwhelming number of situations, the paralegals have trained themselves on the job. Formal training programs do exist. Some are short-term programs (e.g., two-three months), while others have been part of two year degree programs at colleges and universities. See American Bar Association, Special Committee on Legal Assistants, Proposed Curriculum for Training of Law Office Personnel (April, 1971).

There are effective training methodologies in existence which can be and have been utilized in a wide variety of settings. It is not necessary for the paralegal to go to college to be trained.

CHAPTER THREE

WHAT IS A LEGAL PROBLEM?

What do we mean when we say that "we have a government of law, not of men?" It does not simply refer to the law of the criminal code; it tells us that every aspect of the lives of every one of us is governed by the law. The individual opinions of men do not control our lives unless those opinions have been duly formulated into law. It would not be an overstatement to say that any single activity of a citizen is controlled by a large number of laws. For example, let's look at some of the laws that are relevant to as simple an act as getting into your car and backing it out of the garage. What laws exist to make this act possible?

1. There is a law which permits you to pick the time of your using the car and garage.

2. There is a law permitting you to own your car.

3. There is a law which prevents anyone else from using your car without your consent.

4. There are zoning laws on where your garage must be located (or where it cannot be located).

5. There are laws requiring that your garage and car meet certain quality standards (e.g., that your garage not be a fire hazard and that your car not be a safety hazard).

6. There are tax laws governing the value of your garage for purposes of property tax.

7. There are motor vehicle laws on carrying your license and driving in a certain way.

8. Etc.

The list could go on and on. It would not be inappropriate to change the statement that "we have a government of law" to read "we have a government of a multitude of laws."

A logical consequence of being surrounded by a multitude of laws is the possibility of experiencing a multitude of legal problems.

Keep in mind, however, that the vast majority of legal problems never get into a courtroom; they are resolved among the parties involved. As you are backing out of your driveway, a car comes along and the driver stops quickly when he sees part of your car enter the road. He wants you to get out of his way so that he can pass. You feel that you have the right of way since you were already on part of the road. A legal problem exists. Who does have the right of way? What is the law? Both of you think that you are in the right. In all likelihood, one of you will "give in" or "give up" and the problem will be solved. The parties resolve the legal problem themselves without the involvement of lawyers and courts.

While on the job your supervisor tells you that you must work the midnight shift for a two week period. You are stunned. When you complain, it is made clear to you that if you don't do it you will no longer have your job. A legal problem exists. There are many laws governing employment, particularly where unions exist or where the employer is the government. What does the law say about such a situation? What would a judge say if it ever got to court? Again, the case probably will never find its way into court, but this does not mean that there were no legal problems involved.

From this discussion, a number of conclusions about legal problems can be drawn:

1. Almost any problem can be a legal problem, or have legal dimensions to it.

This principle is a fundamental consequence of the nature of our government. It applies to everyone -- children, adults, soldiers, employees, patients, inmates etc.

2. Just because a problem is a legal problem it does not mean that it will end up in court.

We shouldn't confuse whether a legal problem exists with who will solve it or who will win. Some legal problems will eventually be solved by courts, others may never be.

3. If you acknowledge the principle that there are a vast number of potential legal problems in our everyday lives, you will not necessarily be fomenting an atmosphere in which everybody will be running around threatening to sue everybody else.

When someone mentions "the law," the great fear is that a suit is going to be brought. Hence people tend to avoid talking about "the law" whenever possible. This factor also tends to encourage people to avoid any talk of "legal problems." This reluctance and this fear is unfounded. Legal problems do not disappear simply because people refuse to refer to them as legal problems.

Will recognition of the extensiveness of legal problems immobilize an organization or an institution? No. Will paranoia about whether everyone will threaten to sue you over legal problems interfer with your ability to carry out your job? Yes.

Our position should be as follows: legal problems naturally tend to arise because in a government of laws, differences of opinion concerning the law are natural and normal occurrences. If this is accepted, then the organization or institution can anticipate the occurrences and plan a way to deal with them. The real headaches begin when there is surprise, disappointment or disdain over the mere mention of legal problems. We should not be threatened by the logical consequences of the kind of government and legal system that we have.

CHAPTER FOUR

WHAT ARE LEGAL SERVICES?

One neighbor casually asks another, "I misplaced my drivers license. Can I drive without it until I find it?" The neighbor gives one of two answers: (1) "Oh no, you can't drive at all till you have it," or (2) "Ya, I think you could drive for a little while and just explain the situation to the policeman if you are stopped." Regardless of which answer the neighbor gives, he is providing legal service Legal service is a process, formal or informal, of helping someone decide how the law applies to a given set of facts. Of course, we all give ourselves legal service every day. Without realizing it, we are probably frequently providing legal services to our colleagues, neighbors, friends and relatives as well.

There is a difference between competent (or correct) legal services and incompetent (or incorrect) legal services. It may be that only one of the answers provided by the neighbor in the hypothetical presented above is correct. Yet, both answers constitute the providing of legal service. As pointed out in chapter two (pp. 5 - 7), you do not always have to have a lawyer to be giving legal service. Whether you are given legal service by a layman (paralegal) or by a lawyer, a test of whether the legal service is competent or not is how knowledgeable and skilled the layman or lawyer is. A primary way in which knowledge and skill are obtained is through training.

In examining the nature of legal services in greater detail, a number of observations should be made:

1. Citizens need help in identifying their legal problems.

We often know that we have a problem without knowing that there is law that governs or that could govern the facts of our problem. We may never even think about the legal system.

2. Citizens need help in articulating their legal problems.

It is one thing to know that our problem is legal, or that it has legal dimensions to it; it is quite another to be able to state the problem. There is a great need for legal services here. What kind of law governs our problem? How should the problem be phrased? What language is appropriate and inappropriate?

3. *Often there is no definite legal answer to our problem.*

Cases, statutes or regulations may simply be silent on the facts of our problem. There may be no clear sense of what the law is. Providing legal services in such cases may involve research on the law of analogous problems. What is the law in problems similar to ours and does this law provide any guidance on what the law of our problem is?

4. *Legal services do not always involve statutes and courts.*

A standard rule in our legal system is: try to negotiate a resolution of the problem without having to go to court. Sometimes this is not possible. For example, if someone is appealing a judgment to a higher court, there is seldom anything to negotiate. This is not true in a great many other cases, particularly when a citizen is in conflict with a government agency or institution. There is usually a good deal of room for the parties involved to settle the problem among themselves. Providing legal services includes helping someone negotiate a settlement of his problem.

5. *Administrative agencies or government institutions exercise quasi-judicial functions.*

Agencies often don't realize that they are quasi-judicial entities. Quasi means "like" or "similar to." Quasi-judicial means acting like a court. All administrative agencies exercise quasi-judicial powers. This fact is fundamental in our legal system. When an agency and a citizen have a conflict and the agency reaches a decision on the conflict, the agency is acting like a court. Sometimes the agency will provide what are called "hearings" to resolve the conflict. In such situations, the agency is acting even more like a court. But formal hearings are not necessary for the exercise of the agency's quasi-judicial function. All you need is a conflict between a citizen and the agency (or between two or more citizens who are within control of the agency) plus a binding decision by agency officials on resolving the conflict. When a citizen is involved in a conflict which is to be resolved through the agency's quasi-judicial system, he very often is in need of legal services in helping him present his case before the agency makes its binding decision.

This reality sometimes gives administrators considerable concern. They like to view disputes within the agency as essentially "family" matters to be resolved solely by the institution and the person directly involved in the dispute. They are very reluctant to even think of these disputes as involving legal matters. The fact is, however, that it is totally incorrect to argue that only courts deal with legal matters and that agencies deal with "administrative" matters. Again, legal problems won't disappear by calling them administrative problems. Furthermore, calling a problem administrative does not eliminate the need for legal services on both sides of the dispute in helping to resolve it.

Does a system which allows an individual to utilize available legal services in his dispute with the agency cause delay in the operation of the institution? Sometimes it does. It is submitted, however, that the benefits of allowing legal services outweighs the burdens resulting on the institution.

6. Administrative agencies or government institutions exercise quasi-legislative functions.

Agencies also act like legislatures. They do this when they issue their internal rules and regulations. This is their quasi-legislative role. Very often, citizens who deal with the agency want the opportunity to present their own views (in an advisory capacity) on what the rules and regulations of the agency should be. Such individuals sometimes need help in presenting their views. This help is part of providing legal services.

In summary, legal services involves helping people:

1. IDENTIFY LEGAL PROBLEMS.
2. ARTICULATE LEGAL PROBLEMS.
3. DO LEGAL RESEARCH.
4. ASSIST PEOPLE IN NEGOTIATING RESOLUTIONS TO PROBLEMS.
5. ASSIST PEOPLE IN THE QUASI-JUDICIAL PROCEEDINGS OF ADMINISTRATIVE AGENCIES.

6. ASSIST PEOPLE IN QUASI-LEGISLATIVE PROCESSES OF ADMINISTRATIVE AGENCIES.

CHAPTER FIVE

THE LEGAL PROBLEMS OF INMATES AND THEIR LEGAL SERVICE NEEDS

You are likely to have one of two reactions to this chapter:

A. "An inmate has quite a need for legal services:"

or

B. "My God! You're trying to call everything that is done to and done by an inmate a legal problem. We couldn't begin to function as an institution if everything that the inmate doesn't like is called a legal problem."

It is urged that corrections personnel not take a defensive position with respect to the contents of this chapter. The term "legal problem" does not necessarily mean that lawyers, courts and injunctions are going to flood correctional institutions. Conflicts between the inmate and the institution (and between inmate and inmate) occur frequently. Also, the inmate often has conflicts with the court system that sentenced him to the institution in the first place. What we are talking about is a rational system of conflict resolution. Given the inmate's need for legal services, what systems of providing legal services make good administrative sense? Before getting to these systems, however, we need to explore what the legal problems of inmates are.

It would be inappropriate to say that "inmates will bitch about anything if given a chance," or "inmates are so manipulative that they would use every opportunity to disrupt the institution." The truth or falsity of these statements is not relevant to the question of what legal problems inmates <u>could</u> have.

POTENTIAL LEGAL PROBLEMS AND LEGAL SERVICE NEEDS OF INMATES

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
A. Inmate arrives at institution.	1) Inmate is confused about how he can challenge his criminal conviction. 2) Inmate is concerned about civil matters on the outside (e.g., divorce, child custody, tax cases etc). 3) Inmate is confused about the exact computation of the sentence time that he owes.	a) Inmate is given a checklist informing him how many days he has to appeal, how he goes about appealing, how he can get copies of his papers, etc. b) Inmate is administered a "legal checkup" which lists all of his outside civil problems and which outlines the steps that he can take to try to get them resolved. c) Inmate is told how he can calculate the time he owes with particular attention to the problem of whether he gets credit for time served during trial.
B. Inmate wants to challenge his conviction on appeal.	1) He does not understand the law. 2) He does not understand how to state a legal claim or write a legal argument.	a) The law is explained to the inmate. b) He is given help in writing his legal papers. c) The inmate is taught some fundamentals of legal research and using the law library.

(Chart cont'd.)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
C. Inmate is sued for divorce, has a child custody problem, is concerned about his property on the outside, etc.	1) Inmate is partially or totally in the dark about what is going on outside concerning his divorce case, custody problem, etc. 2) Inmate wants to challenge the actions of outside administrative agencies (e.g., child welfare agency). 3) Inmate wants to raise defenses in civil suits brought against him (e.g., divorce action against him). 4) Inmate wants to bring a civil suit against people or organizations on the outside.	a) The civil law is explained to the inmate. b) Letters are sent on the inmate's behalf seeking information. c) Assistance is given the inmate in writing his own letters seeking information. d) Assistance is given the inmate in drafting letters of complaint against outside agencies. e) Letters of complaint to outside agencies are sent out on behalf of the inmate. f) The inmate is taught some fundamentals of legal research and using the library. g) Legal papers (e.g., pleadings, briefs etc.) are drafted for the inmate in connection with his defense against civil cases brought against him or in connection with the civil actions he wants to bring against others on the outside.

(Chart cont'd.)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
D. Inmate is charged with violation of institutional rules (not amounting to a crime).	1) Inmate is partially or totally confused about inmate disciplinary procedures. 2) Inmate is told that under the rules of the institution, he is not entitled to a disciplinary hearing on the infraction he is charged with, and he wants to challenge this decision not to give him a hearing. 3) Inmate is told that he will be given a hearing, but he feels that he is not able to investigate all the facts in preparation for the hearing. 4) Inmate wishes a more complete statement of the charges against him. 5) Inmate wants help in putting his version of the facts in writing. 6) Inmate wants help in presenting his case at the disciplinary hearing. 7) Inmate complains that the punishment he is in fact given after a hearing (which found him "guilty") is greater than the punishment he was supposed to have been given according to his understanding of the decision of the disciplinary hearing. 8) Inmate wants help in presenting his case before the body (or person) in the institution that hears appeals from decisions of disciplinary decisions. 9) Inmate wants help in appealing the final decision of the institution on his disciplinary case in court.	a) The disciplinary rules and procedures of the institution are given to the inmate in writing. b) The inmate is given oral instruction on the disciplinary rules and procedures in a group or class lecture format that is small enough to enable (and to encourage) the inmate to ask questions about the rules and procedures. c) The inmate is given the opportunity to sit in on disciplinary hearings as an observer and perhaps to role-play a hearing in order to gain a better understanding of the process. d) Someone (e.g., an inmate paralegal) helps the inmate investigate the facts before the hearing begins. e) Someone (e.g., an inmate paralegal) helps the inmate present his case at the hearing (i.e., represents him). f) The inmate is given help in preparing the following documents:

(Chart cont'd)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
D (cont.)		(i) A letter protesting the failure of the institution to give him a disciplinary hearing. (ii) A statement of his position on the alleged violation. (iii) A letter stating why the decision of the disciplinary hearing should be reversed or modified by the body or person to which he can appeal the decision in the institution. (iv) Legal papers to be filed in court challenging the disciplinary action of the institution. (v) A letter to the warden or superintendent challenging the validity of the actual punishment received following a hearing that found him "guilty."

(Chart cont'd.)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
E. Inmate is charged with the commission of a new crime in the institution.	1) Inmate is partially or totally confused about his legal rights (e.g., does he have a right to remain silent and the right to an attorney, etc.?) 2) While the institution is deciding whether or not to bring the matter to the attention of the local prosecutor the inmate wants to challenge the custody or classification status he is put in as a result of the alleged criminal act. 3) While the inmate is waiting for the prosecutor to decide whether to bring criminal charges against him (or during the criminal trial itself), the inmate wants to challenge the custody or classification status he is put in. 4) The inmate decides to defend himself in the criminal case brought against him and wants help in preparing his case. 5) The inmate has outside counsel representing him in the criminal court case, but the inmate feels that he is not fully able to help his counsel collect all the relevant facts.	a) The inmate's rights are explained to him. b) The inmate is assisted in obtaining appointed counsel. c) Someone in the institution works with the inmate's counsel on the problems of fact gathering and investigation. d) If the inmate is defending himself in criminal court, someone in the institution helps him. e) On challenging custody or classification procedures, see section G below.
F. Inmate is convicted and wants to appeal the conviction.	See section B above.	See section B above.

(Chart con't'd.)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
7. *Inmate is brought before a classification committee for a determination on a change in custody level or on the selection of a treatment or training program.*	1) Inmate is partially or totally confused about institutional classification procedures. 2) Inmate feels that there is a danger that the full facts will not be brought to the attention of the classification committee because he has not had a chance to present his version of the facts. 3) Inmate feels that he will need help in presenting his views before the classification committee. 4) If it is possible to appeal the decision of the classification committee within the institution, the inmate may want help in bringing this internal appeal to the institutional head or to the director of the Department of Corrections.	a) The classification procedures of the institution are given to the inmate in writing. b) The inmate is given oral instruction on the classification rules and procedures in a group or class lecture format that is small enough to encourage the inmate to ask questions about the rules and procedures. c) The inmate is given the opportunity to role-play a classification "hearing" in order to gain a better understanding of the process. d) The inmate is given help in collecting all of the facts which he wants to bring to the attention of the classification committee. e) The inmate is given help in presenting his views before the classification committee. f) The inmate is given help in appealing the decision of the classification committee internally. g) The inmate is given help in appealing the classification decision in court.

(Chart cont'd.)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
H. Inmate is transferred.	[If the inmate was transferred following a disciplinary hearing, see section D above. If he was transferred pursuant to a decision of the classification staff, see section G above.] If the inmate is given neither a disciplinary nor a classification hearing before he is transferred, he may want to complain about the absence of the hearings to the Director of the Department of Corrections and/or in court.	[See sections D or G above if disciplinary or classification hearings were held.] a) The inmate is given help in making his complaint to the Director of the Department of Corrections. b) The inmate is given help in challenging the transfer in court.
I. Inmate feels threatened by other inmates.	1) Inmate is afraid of reprisals if he names the people who are threatening him. 2) Inmate feels that the institution could do more to protect him from his fellow inmates. 3) Inmate finds himself involved in disciplinary action taken by the institution against him because of his response to the threats against him from fellow inmates. 4) Inmate wants to challenge the institution in court for failure to take adequate steps to protect him.	a) The inmate is given help in making his case to the institution (a) that his life or safety is being threatened and (b) that the institution should do more to protect him. b) If disciplinary proceedings are involved, see section D above. If classification proceedings are involved, see section G above. c) The inmate is given help in preparing his court challenge against the institution on his claim that not enough is being done to protect him.

(Chart cont'd.)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
J. Inmate is dissatisfied with food, vocational, library or living conditions.	1) Inmate wants help in presenting his petition before the administrators of the institution. 2) Inmate wants help in appealing or presenting his case to the Director of the Department of Corrections. 3) Inmate wants help in challenging institution conditions in court.	a) The inmate is given help in stating his case before the administrators (or to the Director of the Department of Corrections) that the conditions in the institution need changing. b) The inmate is given help in challenging prison conditions in court.
K. The institution issues changes in the rules and regulations.	1) The inmate feels frustrated in bringing his views on rule changes to the attention of the supervisors of the institution. 2) The inmate wants help in bringing his views to the attention of the Director of the Department of Corrections. 3) The inmate wants help to challenge institutional rule changes in court (or old rules still in force).	a) Some mechanism (e.g., ombudsman, inmate council etc.) is set up in the institution through which inmates can present to the supervisors their views on the rules and regulations of the institution. b) The inmate is given help in presenting his views (orally or in writing) before his mechanism. c) The inmate is given help in preparing his court challenge to the institutional rules.
L. The inmate has a parole release hearing.	1) The inmate is confused about the release procedures of the Parole Board. 2) The inmate wants help in collecting all the facts that he wants to bring to the attention of the Board before the parole release hearing.	a) The inmate is given the Parole Board procedures in writing. b) The inmate is allowed to role-play a release hearing in order to fully understand the process.

(Chart cont'd.)

EVENT	POTENTIAL PROBLEMS IN CONNECTION WITH EVENT	LEGAL SERVICE POSSIBILITIES
L cont'd.	3) The inmate feels that he needs help in presenting his case at the parole release hearing. 4) The inmate is dissatisfied with the decision of the Board and wants help in applying for a re-hearing or in appealing to the full Board. 5) The inmate wants help in challenging the Board's decision in court.	c) The inmate is given help in collecting all the facts before the date of the hearing. d) Someone assists the inmate to make his case at the hearing. e) The inmate is given help in applying for a re-hearing or in appealing to the full Board. f) The inmate is given help in preparing the legal papers required to challenge the Board's decision in court.
M. Following the inmate's release on parole, he is brought back to the institution on a charge of violating the conditions of parole.	[See section L above. Substitute "parole revocation" for "parole release".]	[See section L above. Substitute "parole revocation" for "parole release."]

Chapter Six

Methods of Providing Legal Services Other than Through the Use of Inmates

What are the ways in which correctional institutions in the country have attempted to assist inmates in providing legal services on some or all of the problems mentioned in chapter five (other than through programs in which inmates assist other inmates)?

1. Attorneys

Assigned or volunteer attorneys have provided inmates with assistance on their legal problems, but their input has been limited primarily to cases that have gotten into court. Attorneys have not been extensively involved in the internal or administrative problems of inmates.

Since 1969, the Texas Department of Corrections has had a major program of legal assistance for inmates. There are now twelve attorneys who reside on the grounds of the institutions and represent inmates on their legal problems. The services rendered for the 16,000 inmates include preparation, filing, and prosecution of petitions for writs of habeas corpus, representation before the Immigration and Naturalization Service and the Social Security Administration, and various civil problems. The attorneys have paralegal assistants and summer law student interns to aid them. A full law library has also been set up at each TDC unit.

In a number of states, the Public Defender's Office has assigned some of its attorneys to work exclusively on inmate legal problems. The number of attorneys engaged in this type of practice nationally is small in view of the volume of inmates that need assistance.

2. Law Students

Within the last five years, a good number of institutions have made arrangements with local law schools to have law students come to the institutions to provide legal services for the inmates usually under the supervision of a law school faculty instructor. A recent report by the Council on Legal Education for Professional Responsibility, Inc., listed 54 law schools in the country as providing some form of legal assistance to inmates.*

An example of such a program is the Columbia Law School -- Green Haven Legal Assistance Program. Law students from Columbia made weekly visits to Green Haven Correctional Institution, a maximum security prison about a hundred miles north of New York City. The students regularly interviewed inmates in connection with their court petitions. The University of Kansas Legal Assistance Project is also typical. Since 1965 law students from the University of Kansas School of Law have provided legal services to inmates at the United States Penitentiary at Leavenworth, the Kansas State Penitentiary at Lansing, the Kansas Industrial Farm for Women, the Kansas Industrial Reformatory and the Kansas Reception and Diagnostic Center. A team of students study specially devised forms filled in by inmates, interview the inmates at the institutions, draft legal papers for them and undertake legal research on their behalf.

While law students have provided inmates with useful service, there are frequently a number of logistical problems that impede the effectiveness of the program. The student often has too large a caseload. Traveling to and from the institution has been a problem. Finally, as students move from semester to semester, and as they are graduated, problems in maintaining continuity of service arise due to student turnover.

3. Institutional Staff

Employees of the institution sometimes assist inmates with their legal problems, although such employees rarely consider themselves as providers of legal services. Social workers, for

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*Council on Legal Education for Professional Responsibility, Inc., Survey of Clinical Legal Education: 1971-1972 (1972)

example often will assist the inmate in obtaining information concerning divorce and custody matters taking place on the outside. On occasion, they may write to social service agencies (e.g., child welfare department) and make requests on behalf of the inmate. In the California Department of Corrections, an inmate who is to appear before a disciplinary committee is allowed to select, from a pool of employees, someone to help him gather all the facts pertinent to the hearing. The employees volunteer to become members of the pool.

Unfortunately, institutional staff are rarely provided with any significant training in their role of assisting inmates. Furthermore, there are a large number of legal problems that the staff stays away from completely. The employees sometimes find themselves in role conflicts which prevent them from vigorously assisting the inmate. This is particularly true when the inmate's grievance is with the institution itself.

CHAPTER SEVEN

ROLES FOR INMATES IN INSTITUTIONAL LEGAL SERVICE PROGRAMS

This chapter is divided into three sections. First, there is a general discussion of the inmate as paralegal. Then a number of models of inmate paralegal programs are presented. Finally, there is a description of some of the major inmate paralegal programs in the country.

SECTION A. THE INMATE AS PARALEGAL*

Historically, the first inmate paralegal was the "jailhouse lawyer," or the "writ-writer" as he was sometimes called. He spent long hours studying law by himself, working on his own case and helping other inmates with their legal papers. A number of these individuals acquired considerable reputations as effective advocates. Some of the lawyers with whom they came into contact occasionally made the claim that the jailhouse lawyer knew more law than many "real" lawyers. A recent story in a Virginia newspaper said of one writ-writer that "legal scholars and officials" had described him as "the most effective jailhouse lawyer held in captivity; he assisted approximately 100 indigent inmates in preparing habeas corpus petitions and was legal advisor to more than 1,000 prisoners--mostly in the federal penitentiary in Atlanta where he served the bulk of his time."**

*See Chapter Two, pp. 5-7, supra, for the definition of a paralegal and the roles that he has played in the free world.

**Norfolk Ledger-Star (August 15, 1972).

Correctional staff often discouraged the activity of the jailhouse lawyer, and in many institutions, he was absolutely prohibited from providing any legal service to his fellow inmates. It was felt that he was raising false expectations in the minds of the inmates he assisted, that he rendered incompetent service and that he took advantage of these inmates by charging them exorbitant "fees" in the form of money, script, cigarettes, clothing, drugs, appliances and sexual favors. Since the late 1960's, however, the jailhouse lawyer has been gaining considerable respectability. In some measure, this has been due to court opinions authorizing his activities. In addition, many correctional officials came to realize the the fears expressed about the jailhouse lawyer had been overstated.

Allowing inmates to assist each other on legal problems can have a very positive effect on the institution. Morale is increased when inmates are given every opportunity to express their grievances in an orderly fashion both inside institutional walls and in the courts.*

The late Warden Follette of Green Haven Correctional Institution in New York made the following observation to the author when asked how he felt about having his authority and programs challenged in court:

> "All the rules of this institution are in this book. I stand behind these rules. I will listen to rational arguments on what should or should not be in this book. If I think or a court thinks that a particular rule is wrong, then it shouldn't be in here."

This attitutde is becoming more and more evident today, although admittedly, a number of correctional administrators (and many staff) still feel threatened by and actively discourage <u>any</u> challenge to what they are doing.

Allowing inmates to participate in legal service programs also has important implications for the institution's vocational and rehabilitation efforts. There are jobs in law firms and government agencies for paralegals. The training and experience

*See generally, Krantz, S., and Finkelstein, M., <u>Perspectives on Prison Legal Services: Need, Impact, and the Potential for Law School Involvement</u> (National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, 1972).

gained by the inmate in working on his own legal matters and in aiding other inmates can be invaluable in his obtaining employment in the law upon his release.*

SECTION B. PROGRAM MODELS IN THE UTILIZATION OF INMATES IN INSTITUTIONAL LEGAL SERVICE PROGRAMS.

The models described in this section are dependent on the training programs discussed in Part II of this text.** No mention of the specifics of training will be made here, although it should be understood throughout that the training component is critical. Also, there is little or no reference here to the resources that will be needed by and that are available to the institution in implementing any of the models.***

PRECONDITIONS TO MODELS

Several basic conditions apply to all of the models:

a) The correctional department must officially acknowledge that inmate involvement in legal service programs is worth exploring.

b) The institution must be flexible enough to devise and to adapt a program to the circumstances confronting it.

c) The institution must make time available to the inmate (i) for training and (ii) for assisting other inmates in the legal service program.

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*See Statsky, W., Introduction to Paralegalism: Perspectives, Problems and Skills (West Publishing Company, 1974).

**See Chapters 9ff. infra.

***See Chapter 8 infra.

d) The inmate paralegal will have law students or attorneys available to him for consultation and/or supervision. For example, the student or attorney could meet with the paralegal at the institution once every week or two to discuss the cases being handled by the paralegal, and there can be regular communication by mail through which the paralegal receives guidance and instructions.

e) In setting up a legal service program involving inmates, the institution should not be guided by the test of what is the absolute minimum program that must be provided under law; rather the test should be: what program is administratively feasible toward the goal of providing inmates with the best setting possible to assist each other?

f) The regulations adopted by the institution to administer a legal service program (e.g., no inmate may charge another inmate for his services) must be reasonable.

g) The institution should not attempt to second guess the quality of the service which one inmate provides another, nor to interfere with the service provided based on the institution's interpretation of the validity of the claim or complaint in question.

h) The decision by an inmate to seek assistance from another inmate must be a totally voluntary decision.

MODEL I

1. Any inmate can be a paralegal

2. An inmate in need of legal services (see chart on pages 15ff supra) can select any inmate who is willing to assist him.

3. The institution will make every effort to grant requests by inmate paralegals for additional time (away from some of their other institutional responsibilities) to work on the cases of inmates who have requested their help.

4. No restriction is placed on the kind of case on which an inmate paralegal can provide assistance to another inmate.

MODEL II

1. A system is devised by which the institution designates a number of inmates as paralegals within the institution, [e.g., the institution asks a panel of public defenders, district attorneys, law professors, etc. to interview inmates and to recommend some of them for the positions as inmate paralegals; the institution asks the trainer of the inmates to recommend candidates after the trainer has observed the inmates in his classes on legal subjects. Some of the standards to be used in selecting paralegals are: (i) aptitude of inmate, (ii) anticipated length of stay in institution until release, (iii) discipline record of inmate in the institution, etc.] (The panel might also be asked to help the trainer design a training curriculum and evaluate its effectiveness.)

2. 2. The designated inmate paralegals work independently of each other in their cells or in areas provided for them by the institution.

3. Designated inmate paralegals are relieved of most other institutional work responsibilities.

4. If inmates who have not been designated wish to be paralegals, they are free to do so, but they are not relieved of their normal work or vocational training responsibilities.

5. No restriction is placed on the kind of case on which a designated inmate paralegal can provide assistance to other inmates.

MODEL III

[Model III is the same as Model II except for the following]

1. Designated inmate paralegals do not work on every kind of case; they function as specialists.

2. The institution will consult with a panel of public defenders, district attorneys, law professors, etc. to identify the areas of concentration in which the designated inmate paralegals should specialize.

3. Examples of areas of specialty are:
   (i) sentence computation problems of all newly arrived inmates;
   (ii) court challenges to inmates' convictions;
   (iii) fact investigation and representation at disciplinary hearings;
   (iv) domestic relations cases, e.g., child custody;
   (v) institutional grievances via inmate council (e.g., the council makes recommendations to the institution on proposed rule and regulations; if an inmate has a grievance against the institution, he is encouraged to present his grievance to the council; the council then makes a recommendation to the institution on what to do about the inmates grievance);
   (vi) Institutional grievances via inmates as ombudsmen (e.g., the ombudsmen is is given authority to check into specific inmate grievances and to make recommendations to the institution to resolve such grievances).

MODEL IV

[Model IV is the same as Model II except for the following:]

1. Designated inmate paralegals work together as a team in providing legal services (i.e., a "paralegal law firm.")

2. There can be one large team which handles any kind of case, or there can be several teams that specialize in certain areas of legal services (see Model III on how these specialty areas are identified.)

MODEL V

[Model V is the same as Model II except for the following:]

1. The general inmate population designates or elects inmates to be paralegals as opposed to their being selected by the institution.

2. Before an inmate can be a candidate for election as a paralegal, he must be screened through a panel of public defenders, district attorneys, law professors, etc., in the manner described in Model II.

3. The elected inmate paralegals (i) work independently of each other or (ii) within team(s). (See Model IV on the team concept.)

4. The elected inmate paralegals work on (i) any kind of case or on (ii) specialty cases. (See Model III on the identification of specialty areas.)

MODEL VI

[Model VI could operate within the framework of any of the above five models.]

An inmate who is about to be released (either by reason of parole or expiration of term) is designated by the institution (as in Model II) or elected by the general population (as in Model V) to be a paralegal with the expectation that upon release, he will continue to serve as a paralegal by returning to the institution daily or on some other regular basis. This individual could handle any kind of case, or specialize in certain areas, e.g., representation of inmates at disciplinary or parole release hearings.

SECTION C. INMATE PARALEGAL PROGRAMS IN AMERICA

The following list is a representative sampling of the variety of roles that inmates have played in legal service programs.

At the State Correctional Institution in Graterford, Pennsylvania, the superintendent has authorized the formation of a Paraprofessional Law Clinic. It is composed entirely of inmates who screen a large volume of their fellow inmates' requests for legal services. They work on sentence computation problems, assist inmates in gathering their legal papers (e.g., transcripts of trial), prepare appeal documents, work on detainers. They have been given space in the building to work and interview "clients." They do not work on other institutional jobs. They are paid $1.00 a day for their work in the Clinic.

At a correctional facility in the Bronx, New York a group of inmates were given training in understanding the legal system and in legal research. The course was taught by attornies from the West Publishing Company (which sells law libraries) and was based on a curriculum devised by individuals from Harvard Law School, the New York Law Institute, the University of Buffalo Law School and the West Publishing Company. The inmates were selected from among a pool of volunteers with two primary criteria in mind: high motivation and literacy. The graduates of the program assisted inmates with their legal problems. They also became inmate instructors in training other inmates in legal research after the West attornies left. According to the West Publishing Company, similar legal research programs have been conducted at correctional institutions in Arkansas, Texas, Ohio, Minnesota and New Jersey.

At the New Jersey State Prison in Trenton, there are a number of programs in which inmates provide legal services to other inmates. The general inmate population can nominate inmates to the Prison Classification Committee for the position of Law Library Clerk. The committee makes the final selection based on the need for clerks, the literacy of the nominees and their prior disciplinary record in the institution. The clerks not only run the law library, they also provide legal assistance to inmates. Separate from the Law Library Clerk program is the Inmate Legal Association (ILA) which is a legal service unit run entirely by inmates. The Association has regular communication with a local public defender's office on the cases being handled by the staff of the Association. The program has been

so successful that members of ILA have been transferred to other institutions within the New Jersey Correctional System that have a need for legal service manpower.

The State Prison at Trenton also has an Inmate Committee composed of elected inmates who hear inmate grievances which are then communicated to the Warden at a weekly meeting.

Finally, mention should be made of Trenton's Disciplinary Procedures (the "Court Line"). Any inmate charged with a rule infraction before the Adjustment Committee can request "civilian counsel" to represent him at the hearing. Other inmates are authorized to act as "civilian counsel." This program is similar to that of the Rhode Island Correctional Institution in Cranston which permits "inmate advocates" to represent inmates brought before the Disciplinary Board. A recent court case described the Rhode Island program as follows:

> *"inmates...who are charged with disciplinary violations are entitled to timely, written notice of the charge, investigation and review of the charge by a superior officer, a hearing before a disciplinary board, administrative review of the board's decision, and a record of the proceedings. At the hearing, the inmate is read the charge and given the opportunity to respond. If he denies the charge, he may present his side of the story, including calling and examining witnesses. He may have the assistance of a lay advocate."* Gomes v. Travisono, *No.4794 (D.R.I., Jan. 16, 1973).*

At the Nebraska Penal and Correctional Complex, the institution had the following rule:

> *"Legal Work - A legal advisor has been appointed by the Warden for the benefit of those offenders who are in need of legal assistance. This individual is an offender who has general knowledge of the law procedure..."*

At Lebanon State Prison in Ohio several inmates are appointed by the institution as Legal Service Clerks who function somewhat like the law library clerks at Trenton, New Jersey in that both have custodial - librarianship roles in connection with the

institution's law books and both act as counselors to inmates who need help in their legal matters. In addition, the Legal Service Clerks at Lebanon screen cases before they go to law students from Capital University Law School. The Clerks assist the Law school's inmate legal assistance program in collecting information about an inmate's case and in helping to weed out unmeritorious cases. A Clerk at Lebanon can request that he be relieved of his regular work assignment so that he can spend more time aiding other inmates. If his request is granted, he will not receive the nominal pay that inmates usually earn in regular institutional assignments. Most of the facilities within the Ohio State Correctional System have Legal Service Clerk Programs.

A group of inmates at Norfolk Prison, Massachusetts have set up a Legal Advisory Committee consisting of five "jailhouse lawyers" and four other men from the general population. Among their activities have been assisting inmates in their legal papers and in soliciting donations from the outside for law books.

The Center for Correctional Justice in Washington, D.C. has had considerable experience in developing dispute settlement mechanisms within institutions that involve inmates or wards as advocates or representatives. The Karl Holton School in Stockton, California is part of the California Youth Authority. The Center has devised a Ward Grievance Procedure for the School in which a ward with a grievance or "beef" can have another ward act as his representative in the grievance process. The Center has also worked with the Massachusetts Correctional Institution at Concord in the design of an Institutional Improvement and Complaint System. When a matter comes before the Committee for Institutional Improvement, the inmate or resident can be represented by anyone of his choice, including other residents.

CHAPTER EIGHT

RESOURCES AVAILABLE IN SETTING UP LEGAL SERVICE PROGRAMS INVOLVING INMATES AS PARALEGALS

The institutional resources needed are as follows:

1) *Training Manpower*
2) *Law Library*
3) *Office Space*
4) *Office Supplies*
5) *Security Manpower*
6) *Inmate "pay"*

These needs can be met in a number of ways:

a) By drawing on the resources that already exist within the institution's budget;

b) By soliciting volunteer manpower and contributions for materials from the community;

c) By asking the legislature for a special appropriation;

d) By seeking foundation funding;

e) By seeking special program funds from appropriate governmental agencies.

1) TRAINING MANPOWER

The inmate paralegals need training in the law. Volunteer manpower should be readily available to fulfill this need.

Volunteer attorneys to draft the curriculum and to teach the courses could be solicited from a number of sources:

a) state bar association;
b) local bar association;
c) law school professors;
d) public defenders;
e) state attorney general's office;
f) local prosecuting attorneys;
g) private law firms who could allow firm members to volunteer time (i.e., "pro bono"work);
h) publicly funded law offices such as the legal service offices funded through the U.S. Department of Health, Education and Welfare and the Office of Legal Services within the Office of Economic Opportunity.

In addition, law students at local law schools could be asked to run training programs at the institution.

These attorneys or law students may simply be able to allocate their time based upon the arrangements that they make with the institutions with which they are associated. It may be however, that they will attempt to obtain funding for part or all of the cost of their involvement. For example, they may draft and submit a proposal to a foundation for funds. In such cases, it would be highly advantageous if the correctional institution co-sponsors the funding request or at least provide an enthusiastic letter endorsing the proposal.

Attorney or law student manpower will also be needed to provide the inmate paralegals with consultation assistance on the cases that the paralegals are handling for other inmates. As indicated above (supra p.31) much of this consultation can be provided through the mail and meetings at the institution once every one or two weeks.

In addition to using volunteer manpower, the correctional institution may want to consider soliciting funds itself for a full or part time attorney whose sole function would be to develop curriculum, conduct training and provide consultation supervision.

2) Law Library

It is essential that the institution have a comprehensive working law library.* It must be kept up to date with the latest law. It should include a complete set of the court opinions of the state in which the institution is located, a complete set of the state's statutes, all the United States Supreme Court opinions, a complete set of the lower court opinions, all of the regulations issued by the central Department of Corrections, legal dictionaries and a good number of the standard practice and form books which are guides to the use of law and the resolution of legal problems. Such a law library can be expensive. Some states are receiving federal grants from such agencies as the U.S. Justice Department's Law Enforcement Assistance Administration to purchase such libraries. States are also drawing upon their own funds to set up libraries. Very often, inmates are trained to be librarians or library clerks.

Donations can also be solicited. For every set of books containing judicial opinions (called "reporters"), for example, the opinions are first printed in large or small pamphlets (called "advance sheets") before they are printed in the bound volumes. When the bound volumes are printed, the advance sheets are usually thrown away. This is an unfortunate waste since the advance sheet are almost always in perfect condition. Law libraries of law schools, bar associations and law firms could be asked to save their advance sheets (and any other law texts they no longer want) and deliver them to the institutions law library. Inmate librarians could easily be trained to sort the donated material and place them in order.

3) Office Space

A relatively large area is needed for the law library and another area is needed for the inmate paralegals to interview other inmates and work on their legal problems. Hopefully, these needs can be met by a careful assessment by the institution of its space resources.

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*See American Bar Association, Resource Center on Correctional Law and Legal Services, Providing Legal Services to Prisoners: An Analysis and Report (May, 1973).

4) OFFICE SUPPLIES

The needs here are: one or two typewriters, a file cabinet that can be locked, desks, chairs, paper, pens, envelopes, stamps etc. Surplus supplies at the institution might be adequate. If not, the inmates will probably be quite resourceful in contacting outside organizations, e.g., corporations, in an attempt to obtain donations. Perhaps the institution could set up an office supply fund for this purpose. Every inmate who seeks help from an inmate paralegal could be asked to give a small amount, e.g., 25¢, which would go into the fund. If an inmate cannot afford this amount, however, he should not be denied the services of the paralegal.

5) SECURITY MANPOWER

The institution may feel that it will need correctional personnel to supervise the flow of inmates into and out of the spaces provided for legal research and counseling. Meeting this requirement should not be too burdensome unless the institution is so understaffed that any adjustments in officer assignments are out of the question. If this is the case, then the institution will have to make a special budgetary request for this manpower. It is anticipated, however, that those officers already assigned to supervise the library and recreational areas could be able to cover the inmate legal service program.

6) INMATE "PAY"

In most institutions, inmates are given some form of compensation for the work assignments that they perform. Inmate paralegals should be able to draw from this same source. If not, then part of the application for funding submitted by the institutions and/or by outside organizations could include a request for funds to cover "pay" for the inmate paralegals while they are participating in the program. Some governmental agencies such as the Manpower Division of the state or the U.S. Department of Labor may be willing to provide a grant which would cover inmate "pay" (or a portion thereof) if a primary objective of the program were to train the inmate paralegals in skills that they could use to obtain employment upon release. As already indicated (supra pp. 29-30) there are jobs available for inmates as paralegals upon release.

PART TWO

GUIDELINES FOR TRAINERS IN THE DESIGN OF TRAINING PROGRAMS FOR INMATE PARALEGALS

Part II is addressed exclusively to training officers and to prospective trainers of inmates as paralegals, The chapters in Part II highlight major curriculum issues that need to be explored in designing any training program.

CHAPTER NINE

OBJECTIVES OF TRAINING

It is often said that "if you don't know where you are going, you'll probably end up somewhere else." As pointed out in Chapter Five, the range of legal service needs in institutions is extensive (pp. 16-24). Where to begin? What to choose? How to design the curriculum?

Trainers at the outset must define what it is that they want taught, and it is strongly urged that they define these objectives as narrowly as possible. Trainers will be tempted to try to teach everything in a short span of time. They may end up with teaching very little if they begin with this perspective.

Training programs can be roughly divided into three categories. In some situations, a trainer may combine the categories into one program (particularly the first two); but in the main, training programs will tend to fall primarily into one of the three categories:

1) *Legal Vocabulary*
2) *Question and Answer - Anecdotal*
3) *Skills Development*

1. LEGAL VOCABULARY

Legal vocabulary training is informational in the sense that the trainer provides definitions to words and phrases that the inmates want very much to learn. For example: "unconstitutional," "double jeopardy," "habeas corpus," "coram nobis," "miranda," "jurisdiction," "collateral attack," "petition," "civil," etc. The inmates want definitions to these terms either because they don't know the definitions at all,

or because they think that they know the definitions and want to compare their definitions with those of an"expert."

2. Question and Answer - Anecdotal

Here the trainer, consciously or otherwise, permits the inmates to barrage him with questions that directly or indirectly pertain to the personal predicaments of the questioners. In short, the inmates ask questions about their own cases. This is quite natural since the inmates' own cases are very much on their minds. The trainer usually obliges by giving the best answers that he can. Often his answers will digress into anecdotes of cases that he has handled in the past or that he knows about in an attempt to permit the inmates to compare their cases with those of individuals in the anecdotes.

3. Skills Development

The problem with the above two forms of training programs is that the inmates tend to learn about the legal system in somewhat of a disorganized fashion, and rarely, if ever, are able to translate what they are told into concrete skills that they can use when the trainer departs. Some of these skills are as follows:

a) *How to state a claim.*
b) *How to obtain records.*
c) *How to read a case.*
d) *How to read a statute.*
e) *How to read a trial transcript.*
f) *How to write an affidavit.*
g) *How to write a brief.*
h) *How to communicate with an attorney.*
i) *How to conduct a legal interview with another inmate.*
j) *How to investigate facts as to events occuring within the institution.*
k) *How to investigate facts as to events occuring or that have occurred outside of the institution.*
l) *How to represent yourself or someone else at a discipline, classification, parole release, or parole revocation hearing.*
m) *How to mediate a dispute involving a small or large number of people.*
n) *etc.*

It is recommended that the training program establish skills training as its objective. To be sure, such training cannot occur without a substantial concentration on legal vocabulary. It is also clear that the trainer cannot ignore the inmate's anxiety to have questions about their individual cases answered. The issues are primarily those of structure and priority. The training must have a focus and an end-product. The trainer must explain to inmates that legal vocabulary will be covered in the context of skills training and that this objective would be compromised if an excessive amount of time is spent on the individual cases of the inmates. The inmates must be made to understand that the trainer is a trainer and not a legal advisor. The temptation of the trainer will be to play the role of the legal advisor because of his need to be "accepted" by the inmate-trainees. He should resist this temptation not only because it is in the interest of the inmates to be taught skills, but also because it will be impossible for the trainer to be a legal advisor in the vast majority of situations.

This is not to say that the trainer should teach skills in the abstract. The training should be centered around actual or simulated problems. This is quite separate, however, from the trainer who makes himself available to answer every question that the inmates have about their own "live" cases in the hope that by so doing the inmates will "pick up" some skills training.

As indicated above, the trainer should be highly selective and narrow in his choice of training objectives. He should not hold out false expectations. It may be that he does not have the time and/or does not feel capable of providing any concentrated skills training. If this is so, it should be clearly stated to the inmates at the out-set. If all that can be given is background or vocabulary training, this should be stated. Perhaps such training could be part of a broader curriculum package in which skills training will be provided at a later date.

If the trainer is able to announce that his immediate goal is skills training, he must carefully identify what skill or skills he is referring to. It is highly unlikely that he will be able to focus on <u>all</u> of the skills mentioned above. His starting point in achieving this identification could be the chart in Chapter Five (supra, pp.16ff) where an attempt was made to provide an exhaustive list of legal service needs and legal service possibilities. He may also want to re-examine the Models

for inmate-paralegal settings within the institution in Chapter Seven (supra, pp. 32ff). The chart and the Models should provide a framework for skills identification.

The trainer should state the training objectives as hypotheses to be tested e.g., "It is possible over a two week period to teach a group of fifteen inmates to state a legal claim by extensively relying on closely supervised written exercises." As the training program proceeds, the trainer will be constantly relating back to his initial hypotheses to determine whether they were valid and whether they need to be modified.

Undoubtedly, the training program will have to be worked out with the administrators of the institution in advance of the training. Soon after an agreement is reached, the trainer should consult with institutional staff and try to meet with a number of inmates who would be likely candidates for the training program. (Care should be taken in identifying such inmates not to talk solely with the highly articulate inmates or those who already have had extensive experience in writ writing. The trainer should also include less vocal trainees who may not be aggressive in presenting their views . The discussion with the inmates should cover the problems of identifying realistic goals of the training program. It may be that as a result of these discussions the trainer may have to meet again with the administrators to re-evaluate the objectives of the program. In the best of all worlds, the trainer, the administrator and selected inmates would have the opportunity to sit down together in order to map out the scope and content of the training program.

There is one overriding objective that does not directly relate to training but which if not fulfilled will defeat the possibility of realizing any of the training objectives. The point was covered in Chapter Three to Five (supra, pp. 8ff), but it needs repeating here. That overriding objective is to convince everyone connected with the institution, from guards to parole board members, that the program is worth while. At the very least, everyone must understand what the training program is about. The worst thing that could happen to the program is that it is viewed by segments of the institution as a disruptive program. This will very likely happen if the program is neither understood nor accepted by everyone.

CHAPTER TEN

RECRUITMENT OF TRAINEES

When a training program encounters difficulties, a classic debate often ensues between the trainer and the recruiter. (if the trainer and the recruiter are one and the same person, the debate is internalized in the form of the question, "where did I go wrong?") The trainer blames the difficulties on the recruiter for failing to select the "right" students, and the recruiter charges that the problem is simply due to the fact that the trainer has failed to do an adequate job of training.

Who should be recruited for the training program? How many should be recruited? The answers very much depend upon the objectives established for the program.

If the training objective will be to provide introductory concepts only (e.g., understanding the court system; the legal vocabulary of an appeal etc.), then an "open enrollment" recruitment policy might be adopted: anyone who can fit into the room will be admitted. If the training will be trainer training in that a small group of inmates will be trained to train other inmates later on, then the recruiter may have to identify inmates who have already had some experience with legal subjects. If the training will emphasize legal writing, trainees may have to be recruited on the basis of certain minimal literacy proficiencies.

In skills training, an ideal class size would be 10-15 trainees so that the trainer might be able to provide at least some form of individualized attention.

As indicated earlier in Chapter Seven (supra, pp.32ff) containing Models for paralegal programs, the institution might allow the general inmate population to select the inmates who would be the paralegals. The trainer should make every effort to respect these selections so long as the inmates so selected otherwise meet the qualifications that the trainer deems necessary for the training program, which should be indicated in advance

The institution already has its own classification process through which inmates are assigned to vocational, school and work responsibilities. The trainer should be able to work closely with individuals connected with this process in identifying appropriate candidates for the training program.

In order for the people trained to be able to help their fellow inmates on legal problems over a period of time, it may be necessary to recruit inmates who do not anticipate parole release within one or two years of the completion of the training program. On the other hand, if the training program has the resources, it may be that those who are scheduled for release within the immediate future <u>can</u> be part of the training program to the extent that these inmates have expressed an interest in becoming paralegals upon release. These latter individuals, of course, will not be able to function as paralegals in the institution for very long. If resources are limited and a choice must be made between training inmates who will probably be remaining in the institution for a long period of time as opposed to a short period, the former should be preferred so that the general population in need of legal services will be able to utilize the services of the paralegals trained.

CHAPTER ELEVEN

TEACHING TECHNIQUES

Too often trainers make the mistake of assuming (1) that the trainees (i.e., any layman) know nothing about the law or (2) that the law is something foreign to the trainees' life experiences. Laymen have had considerable exposure to the law, although they may not have thought of the exposure in terms of the law unless they have had contact with lawyers and courts. Cardinal principles of teaching law to laymen are as follows:

1) *Start the training by finding out:*
   (a) what the trainees already know about the law, and
   (b) what common sense principles and life experiences the trainees brought with them which are law-related even though they may never have been thought of as such.

2) *Build on what they already know about the law.*

3) *Draw connections, whenever possible between their life experiences or common sense and the law.*

Take for example, the constitutional doctrine of "due process of law." The trainer should first determine what the trainees know, if anything, about this term. If they have seen or used the term before, they should be asked what it means and how it is used in order for the trainer to determine whether they understand it. If their understanding is faulty, it is corrected. Suppose the trainees are not familiar with the term. How should they be introduced to it?

The trainer knows that "due process of law" requires certain elementary concepts of fairness, e.g., notice, opportunity to be heard, etc. Instead of making a list of all these concepts, the trainer might devise a simple hypothetical case with which the trainees could identify from their past experiences (e.g., a teacher accuses a student of cheating or an employer fires an employee) and ask them what the basic elements of fairness in the hypothetical are or should be. The trainer then draws the connection between the fairness they saw in the hypotheticals and the doctrine of due process of law. This approach may be more effective in getting the trainees to absorb the doctrine because they will see how the law can spring from and be related to their own good judgment and common sense. They won't exclusively be memorizing a list of abstract concepts; they will be drawing on the concrete experiences of their prior lives. (This approach will be demonstrated more fully in Chapter Fourteen.)

To be sure, this teaching technique may be more time consuming than "laying it all out" for the trainees in lecture form. Time may simply not be available. At least some of the training should proceed along these lines, however, particularly at the beginning of the training program. The great danger is that a lecture full of abstractions may quickly turn off a large percentage of the class.

In the chapters that follow, every effort will be made to determine how other techniques of teaching, e.g., role playing can be effectively used. Whenever possible, the trainee as trainer approach should be adopted. Trainees should be taught to train each other. In the case of inmates, this will be critical after the outside trainer leaves. This can be done in a number of ways. The trainer, for example, can identify those inmates who already have understanding in certain areas of the law and supervise them in training the rest of the class in those areas.

Whatever techniques the trainer can use to draw the trainees out of a passive role are strongly recommended. Four such techniques have been briefly described or referred to here: (1) start with what they already know about the law by making them describe to you what they know; (2) get them to connect their past life experiences to the law; (3) role playing and (4) utilize the trainee as trainer. These techniques should be used not in substitution for lectures or pre-packaged training materials handed to them, rather these techniques are to be used to complement the latter, and to off-set the dangers of passive learning generally.

CHAPTER TWELVE

FACTS VS. LAW: TEACHING INMATE PARALEGALS TO STATE A CLAIM

One of the fundamental skills that all inmate paralegals must learn is how to state a claim. All too often in an inmate's petition to a court the following will be found:

> "My constitutional rights were violated at the trial by my attorney and in the sentence given."

The flaw in such language is that it is infested with legal conclusions. Inmates need to understand that when judges look at their petitions, they focus on the facts in order to determine whether a legal claim has been stated. When judges see nothing but conclusions, they may ignore the petition or send it back as insufficient.

The subject of teaching inmates to state a claim involves three topics:

1. *How to state facts*
2. *Problems of proof*
3. *Relevance*

1) HOW TO STATE FACTS

Perhaps the best way to train inmates to state facts is to provide them with exercises that point out the differences between facts and the law. For example, in the left hand column of the following hypotheticals, there will be improperly stated claims; on the right hand side (in italics) there is a more acceptable statement of the same claim because of its factual content:

A

"My sentence was illegal because it was not the sentence promised."

A

"At the trial, my counsel told me that he spoke to the judge about my taking a plea. The judge told him that if I pleaded guilty he would grant me probation. I relied on this promise and pleaded guilty. The judge sentenced me to three years instead."

B

"At trial, I had an unfair trial because of incompetent counsel."

B

"At the trial I was given assigned counsel by the name of John Doe. Attorney Doe never spoke to me before the trial began. He ignored me at the trial except when he wanted me to plead guilty. Once he told me I was "crazy" not to plead guilty. He told me that he would not represent me if I did not plead guilty. Four times he did not show up on dates scheduled for hearings because of his personal schedule mix-up. Each time I was forced to spend more time in jail awaiting completion of my trial. From the bench, the trial judge told my attorney that he was providing 'poor service' to his client."

C

"In solitary confinement I am subjected to cruel and unusual punishment in violation of my basic rights as a human being.

C

"On January 10, 1970, the Disciplinary Committee sentenced me to 20 days in solitary confinement. It is now March 4, 1970 and I am still in solitary. I have been given no explanation for the fact that I have been here over 20 days. I am not allowed to exercise or shower. I have no mail privileges. I have severe chestpains, but I am not allowed to see the doctor."

By putting the trainees through exercises such as these, pointing out the differences between the different kinds of statements, they should be able to state their claims in proper factual fashion.

The trainees, of course, will want to know what facts they should choose. The answer will depend on what kinds of legal claims they have. (This will be covered in later chapters.)

It would also be beneficial to have the trainees separate their factual statements into units instead of clustering them all together. In statement "C" above, for example, the inmate had two separate stories to tell: (1) he was being held beyond 20 days, and (2) the conditions of solitary confinement were unbearable. It would have been better to have stated the facts of each separately, and perhaps labeling them as "1" or "2".

2) Problems of Proof

Inmates need to understand that they do not have to have "absolute" proof of every fact in order to be able to state it. Whatever proof or evidence they have that will help demonstrate the truth of their statements should be stated. (e.g., they could quote from relevant trial transcripts if available.) Suppose that the inmate has no evidence other than his own word. In such situations, the inmate would be asking the court to conduct an evidentiary hearing in order to establish the facts. The inmate states the facts "to the best of his ability" or "to the best of his recollection." In asking for an evidentiary hearing, he is saying to the court: these are the facts that I recall; please conduct a hearing so that these and other relevant facts can be established.

3) Relevance

Finally the trainer must cover the topic of relevance. The inmate must not only state facts; he must also state relevant facts. Relevance simply means that one fact reasonably tends to establish another fact. If a wife claims that her husband does not support her, it is relevant to state that he does not work. It is not relevant, however, to state that he beats the children. The latter fact may be relevant to a cruelty claim, but not a non-support claim. The trainer should "throw out" a number of hypotheticals and ask the trainees what would or would not be relevant to the main claim made in each hypothetical. They should also be given writing assignments that will deal with this topic.

Here are some examples of relevancy exercises that might be appropriate for written assignments and class discussion. For each exercise, the trainee should state whether or not the action proposed is relevant to the issue(s) in dispute:

1. Mrs. Phillips is being sued by a department store for the cost of a gas refrigerator. Mrs. Phillips claims that she never ordered and never received a refrigerator from the store. The attorney for Mrs. Phillips wants to introduce into evidence two letters: (a) a letter from Mrs. Phillips' landlord stating that her kitchen is not built for any gas appliances, and (b) a letter from another merchant stating that Mrs. Phillips bought an electric refrigerator from him a year ago.

2. Joe Smith has been charged with burglary in Detroit on January 1, 1974. His attorney tries to introduce into evidence testimony that on December 7,8,11,15 and 22 of 1974, the defendant was in Florida.

3. Al Newman is suing Sam Snow for negligence in operating his car. Al's attorney tries to introduce into evidence documentary proof that Sam currently has pending against him four other automobile negligence cases in other courts.

4. Same situation as in #3 above. Sam's attorney tries to introduce into evidence documentary proof that Al currently has pending four other automobile negligence suits in other courts in which Al is suing other defendants.

CHAPTER THIRTEEN

PROVIDING BASIC CHECKLISTS

Often an inmate lacks essential information on basic procedures, such as the mechanics of filing a direct appeal. A series of basic checklists should be provided for the inmates covering such information for the various kinds of legal assistance to be rendered. The checklists can be prepared in a number of ways:

1) The trainer could prepare them himself.
2) The trainer could ask attorneys or law students in the area to prepare them.
3) The trainer can ask the inmate trainees to prepare them themselves under his supervision.

In the third option, the trainees would prepare the checklists within the context of the training. For every topic treated in the training, the trainees would prepare a checklist. The value of the trainees preparing their own manual of checklists cannot be overstated. Their sense of "ownership" of the manual will tend to insure its distribution and use. After a topic is taught in the training, all inmates could be asked to prepare a checklist which will assist other inmates in grasping the basics of the topic covered. The trainer will check the accuracy of the checklists and, with the group, pick the best ones (or one) for use in the legal service program.

The format of the checklists should be direct and simple. They should be geared to local law. At the top of each checklist there should be a statement that the checklist is for guidance purposes only and that it is not intended to cover the specifics of any individual case. The statement could read as follows:

NOTE: This checklist has been prepared for your general guidance. It is not intended to answer every question that you may have about your specific case.

The following is a partial enumeration of checklists that could be prepared:

1. Bringing a Direct Appeal of Your Conviction in this State.
2. Bringing a Direct Appeal of Your Conviction in the Federal Court (if the inmate was convicted in a Federal Court.)
3. Bringing a State Habeas Corpus Action.
4. Bringing a Federal Habeas Corpus Action.
5. How to Obtain a Copy of Your Trial Transcript in this State.
6. What to Do if You are Sued for Divorce while in Prison.
7. How to Obtain Information Concerning the Custody of Your Children.
8. What to Do if Someone is Trying to Adopt Your Children.
9. How to Make a Will.
10. How to Calculate Time Owed (e.g., good time factor, time served pending trial etc.)
11. What to Do With a Detainer Lodged Against You.
12. Etc.

On the following pages there is a suggested format for the drafting of the actual checklists. They can be varied according to local needs. A checklist example is provided for a criminal as well as for a civil problem. The checklist can go into a manual which will include not only the checklists, but also sample standard forms in blank, and sample standard forms that have been filled in with data on a real or hypothetical case.

CHECKLIST

BRINGING A DIRECT APPEAL OF YOUR CONVICTION IN THIS STATE

NOTE: This checklist has been prepared for your general guidance. It is not intended to answer every question that you may have about your specific case.

1. FROM THE DATE OF YOUR CONVICTION, YOU HAVE THE FOLLOWING NUMBER OF DAYS IN WHICH TO FILE A DIRECT APPEAL: _____

2. HOW TO DETERMINE IN WHAT COURT YOU MUST FILE THE DIRECT APPEAL:

   a) First determine the name of the county in which your trial court is located.
   b) If your trial court was in _____ County, you will file your direct appeal in the following court _____

   _____ (name and address of court) _____

   _____

   c) If your trial court was in _____ County, you will file your direct appeal in the etc.
   d) Etc.

3. THE PAPERS THAT YOU MUST FILE ARE AS FOLLOW: _____

   _____

   _____

   _____

   _____

4. YOU MUST SEND COPIES OF YOUR PAPERS TO THE FOLLOWING PEOPLE:

   _____

   _____

   _____

5. HOW TO OBTAIN ASSISTANCE OF COUNSEL IN PRESENTING YOUR DIRECT APPEAL:

6. PARTIAL LIST OF REASONS A COURT WOULD GRANT A DIRECT APPEAL:

7. SUGGESTIONS ON PREPARING FOR AND STATING YOUR CASE

a) Obtain a copy of your trial transcript.

b) Make a list of all the legal claims you think you have.

c) For each legal claim state as many facts as you can that tend to support your claim

d) etc.

CHECKLIST

WHAT TO DO IF YOU ARE SUED FOR DIVORCE WHILE INCARCERATED

NOTE: This checklist has been prepared for your general guidance. It is not intended to answer every question that you may have about your specific case.

1. IN THIS STATE ONE SPOUSE CAN SUE ANOTHER FOR DIVORCE FOR THE FOLLOWING REASONS OR GROUNDS: _____

2. FACTORS THAT YOU MUST CONSIDER IN DECIDING WHETHER TO CHALLENGE OR CONTEST A DIVORCE ACTION BROUGHT AGAINST YOU:

   a) Custody of children

   b) etc.

3. DEFENSES THAT MAY BE AVAILABLE TO YOU IF YOU WANT TO CONTEST THE DIVORCE ACTION: _____

4. HOW TO OBTAIN COUNSEL TO ASSIST YOU IN CONTESTING THE DIVORCE: _____

5. WHAT YOU MUST DO WHEN YOU RECEIVE THE DIVORCE PAPERS IF YOU WANT TO CONTEST: _____

CHAPTER FOURTEEN

TEACHING CONSTITUTIONAL LAW TO LAYMEN

Constitutional law can be divided into two categories: (A) Constitutional law governing criminal trials, and (B) Constitutional law governing institutional life.

SECTION A. CONSTITUTIONAL LAW GOVERNING CRIMINAL TRIALS

Some of the topics that must be covered here are:

1. *Specificity of criminal statutes*
2. *The law of arrest*
3. *Search and seizure*
4. *The exclusionary rule*
5. *The right to counsel*
6. *Pre-trial disclosure*
7. *Jury selection and trial*
8. *Competence of counsel*
9. *Self-incrimination and confessions*
10. *Double Jeopardy*
11. *Bail*
12. *Habeas Corpus*
13. *Exhaustion of state remedies*
14. *Equal protection*
15. *Guilty pleas*
16. *Identification procedures*
17. *Interrogation by police*
18. *Insanity*
19. *Entrapment*
20. *Etc.*

The focus of the training should be the skills needed to state a claim under any of the topics listed above. Checklists might also be used for this area. Each topic can be concisely defined, followed by their main components. Then the trainees can be given written exercises on how to state a claim under each.

SECTION B. CONSTITUTIONAL LAW GOVERNING INSTITUTIONAL LIFE

In this area, the trainer could use the same approach described in Section A above for such topics as:

1. *Religion*
2. *Speech*
3. *Access to Courts*
4. *Punishment and Discipline*
5. *Good Time*
6. *Medical Care*
7. *Transfers*
8. *Mail and Visitors*
9. *Etc.*

Another approach, however, should also be considered.

Several years ago the author conducted a training program in correctional and constitutional law for corrections personnel of the California Department of Corrections at the Soledad training Center. The pedagogic principles and the training format used in that training program for corrections personnel is fully applicable to a training program for inmate paralegals. The method used at Soledad is described on the following pages and is taken from a recent article which appeared in Federal Probation. The hypotheticals, the role playing, the charts and the guidelines can easily be adapted to a program in which the trainees are inmates rather than corrections personnel since the premise of the methodology is that these techniques can assist any layman to understand constitutional law.

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Teaching Corrections Law to Corrections Personnel

BY WILLIAM P. STATSKY

A Philosophy of Legal Training for Laymen

The cardinal error made by trainers is starting with the subject matter of the training (the law) rather than with the trainees themselves. The training must be learner-focused, not content-focused and certainly not instructor-focused. In learner-focused training, the trainer spends considerable time determining what the trainees have brought with them to the training. What do they already know as a matter of common sense? Where do their natural instincts lead them? What are some of their approaches to solving basic problems in interpersonal relationships? What do they consider to be sound and fair methods of running an organization? Once a trainer can lead the class to this level of self-analysis and discussion, the class is then ready to be introduced to the law *in order to make concrete comparisons between what their common sense tells them about conflict resolution and what the approach of the law is to conflict resolution.*

The law and legal terminology can be intimidating to the layman. While there is a general interest in the law, which can be capitalized upon in a training session, the great danger is that the layman will be locked into a dependence on law and legal terms at the expense of drawing on his own common sense and good judgment in performing his job. The moment a layman becomes preoccupied with questions such as "where is the corpus delicti" or "am I providing substantive due process of law," he runs the risk of being immobilized on the job. This is not to say that the layman should be taught to ignore the law; rather, it is to argue that the trainer must find an experiential base for the law *before* he teaches it. The trainee must grasp the relationship between his everyday experiences and the law before he can be expected to apply the law as taught. In short, the law must be domesticated before it is taught.

Within the context of correctional institutions, this approach to teaching law meant that corrections staff had to see the relevance of legal concepts outside the prison setting *before* they were applied to inmates. The concepts had to be "brought home" first. As an example of how this was attempted, the following fact hypothetical was presented to the class for role-playing:

> Joseph Smith is a postal clerk. He sells regular stamps at the window as well as special commemorative stamps. A special commemorative stamp on ecology is printed, but is in short supply. Mr. Smith is told by his superiors to sell this commemorative stamp only to those customers whom he determines "will make special use of such stamps." Peter Jones comes up to Mr. Smith's window and asks for one hundred commemorative stamps. Mr. Smith asks Mr. Jones what he is going to use these stamps for. He replies that they will be used primarily to send out wedding invitations. Mr. Smith tells him that he can't have the special stamps, that he can only sell him regular stamps.

A trainee was asked to play the role of Mr. Jones and to react as he would if he were in this situation. Other trainees were then asked to add additional reactions that they would have if they were Mr. Jones. The basic response that emerged from the class was that Mr. Jones had not been treated fairly. Why was he denied the special stamps? On what basis did Mr. Smith make his determination? What standards did he use? Once these concerns were brought out into the open, the trainer then focused on (1) the law and (2) the application of the hypothetical and the law to comparable problems inside correctional institutions. The law can be simply stated: Whenever a governmental employee has the power to grant or deny a benefit, he must have specific standards to guide him in making his determination, otherwise he could be acting arbitrarily and capriciously. Examples of how this applies to correctional institutions were then explored. For example, in disciplinary matters, if the institution imposes certain punishments for "minor" infractions and other punishments for "major" infractions, does the line staff have specific guidelines on the distinction between minor and major? Is the difference sufficiently spelled out (without having to resort to lengthy and unworkable regulations) so

that the staff member has some guidelines in making his determination? If not, then there is a danger that this staff member will make his judgments arbitrarily in violation of the law.

Note the progression of the teaching process: (1) The starting point is an example of a problem observed in an everyday situation outside the prison walls; (2) the trainees are asked to respond to the problem on the level of common sense; (3) the law is stated; (4) the class compares their common sense responses to the response of the law; in this instance, the relationship is quite clear: The law's preoccupation with standards is not foreign to corrections personnel; they know that it makes good administrative sense to have specific standards; hence an experiential foundation has been laid for an understanding of the law; no matter how technically the law of standards can be phrased, it can be grasped because of the context in which it was presented; (5) the class then focuses on how analogous the fact situation is to problems involving inmates; (6) to the extent that the "outside" problems are determined to be comparable to problems arising in prisons, the class reaches the conclusion that the same common sense response and the same legal principles apply to the prison problems.

Another example, of even greater significance to corrections law, is factfinding: How does the institution resolve a factual dispute between an inmate and the staff? One approach that could have been taken to teach this subject would have been for the trainer to lecture on the following points: (1) The constitution requires procedural due process whenever the consequences of resolving a fact dispute, one way or the other, are serious; (2) the elements of procedural due process are notice, opportunity to be heard, etc.; (3) the courts are beginning to require that procedural due process be applied to certain factual dispute settlement mechanisms in prisons; etc. The problem with this approach is that it is too abstract; it is too removed from the trainees' everyday experiences. No foundation for the law has yet been provided.

The actual approach taken in the training program conducted at Soledad was different. The following hypothetical was posed:

> An administrator calls up one of his employees and says "I have just been looking at the records and it has become clear to me that you have misappropriated a company car. You are fired."

A class member was selected at random to play the role of the employee and the instructor played the role of the administrator. The trainee was asked to play out his reaction to this phone call. His response was one of anger and frustration. "What do you mean I'm fired!" "What car?" "I didn't take the car," etc. The instructor then asked the trainee, with the help of his fellow trainees to try to identify the things that they thought the administrator did wrong, to articulate the "gut" objections that they had to the steps taken by the administrator. With no prodding from the instructor, the following problems were identified: (1) He should have had a chance to explain that he didn't take the car; (2) he should have been told in advance about the accusation before he was fired; (3) the administrator should have explained the basis of his decision.

With some questioning from the instructor, the trainee concluded that the following problems were also present: (4) He should have been allowed to have someone represent him; (5) since the administrator made the complaint, he should not be the one to make the decision; (6) he should be given a written statement of why the decision went the way it did; (7) he should be able to ask someone else to decide if the administrator acted correctly; (8) he should be able to talk with anyone who thinks he took the car.

It was then pointed out that there was legal terminology that applied to each of the above eight concerns: (1) hearing—right to be present; (2) notice; (3) shown the evidence against him; (4) counsel or counsel-substitute; (5) legal bias; (6) statement of reason for the decision; (7) appeal; and (8) cross-examination and confrontation.

The class was then told that all of these factors were called procedural due process. Then the questions became: (1) Do fact situations comparable to this employment hypothetical arise in prisons? (2) Does the class respond the same way to these prison situations as they did to the employment hypothetical? If so why? If not, why not? (3) What does corrections law say about resolving fact disputes in prisons? What have courts said and what direction do courts seem to be taking? (4) How does this statement of the law compare to the approach taken by the class in the employment hypothetical?

Given the general orientation to teaching corrections law to lay corrections staff, the next concern is the provision of general guidelines to prevent legal problems from arising. As to each

guideline, the same learner-focused training philosophy is applied.

Guidelines for Preventive Law

The basic format for grasping the guidelines was to teach the trainees to be able to raise the "right" questions about what they do on the job. What problems or dangers are the courts worried about? What questions can staff ask themselves to avoid these dangers? In layman's language, what is corrections law all about? The following chart was designed to provide the trainees a vehicle to answer these questions:

GUIDANCE CHART

Dangers that concern the courts:	*Questions* that staff can ask to determine if they are taking steps to overcome the *dangers*:
A. Inmates may be subjected to undue *surprise*.	A. Are inmates given adequate advance *notice* (in writing whenever possible)?
B. Staff has so much power and discretion that they could act in an *arbitrary* manner to inmates.	B. Are there specific *standards* provided for staff to govern their use of power and discretion?
C. When it is clear that an inmate does not have to do something that he is asked to do, staff might *pressure* the inmate to do it.	C. Is the inmate given the opportunity to make an *informed consent* to what he is asked to do?
D. Decisions of staff could be made on the basis of *legal bias*.	D. Whenever possible are the decisions of staff *cross-checked* and reviewed by noninvolved employees *before* action is taken?
E. Staff can be too quick to resolve a *fact dispute* involving inmates.	E. Is the inmate given the opportunity to be *heard* in a meaningful way so that he can adequately present his own version of the situation?
F. Staff can make decisions on the basis of *nonexistent facts* or facts that have been *blown out of proportion*.	F. Is every action taken by staff put on *record* which is available to everyone involved, and are steps taken to insure that the staff member consults the record *before* he acts?
G. Staff, particularly administrators, could try to justify the imposition of a restriction on an inmate on the basis of an *undue emphasis on security* and cost.	G. Before staff acts, have they made a *good faith effort* to try *less restrictive alternative* courses of action which would not be as expensive and that would not seriously jeopardize security?

Each of these topics was discussed in the training sessions first in terms of the common sense resolution of problems outside the institution, then as principles of law, and finally as approaches to dealing with comparable problems in prison. These were to be the tools by which staff was to be able to ask the right questions on substantive areas such as religion, speech, medical care, punishment, etc. A series of fact situations was presented and the class would determine which problems were involved, using the guidance-checklist phrases mentioned above. After a while, the class got to the point where it was relatively easy for them to pick out the key issues.

Once the class was able to raise the issues and ask the right *questions*, the concern then became one of developing ways to come up with *answers*. What is a staff member to do when he sees a potential problem of *legal bias*, for example. To say that he should *cross-check* whenever possible is helpful, but not the final word on when he *has* to get out of the picture because he is too involved. The guideline devised to help staff to make this determination was the *Great Due Process Balancing Act*.

In the final analysis, the course of action taken by staff will be evaluated in large measure on the basis of the particular circumstances present when he took or contemplated that course of action. There are no hard and fast rules that apply to all circumstances. The test is usually "what is reasonable under the circumstances." How does a staff member determine what is reasonable? By going through the Great Due Process Balancing Act which outlines the factors that need to be weighed to determine the validity of the action taken. These factors appear to be long and complex, but in fact, once understood, they can be applied instantaneously. At issue are the restrictions placed on inmates. There can be *substantive restrictions* such as ordering an inmate to submit to a strip search or to transfer his job placement, and there can be *procedural restrictions* such as denying an inmate counsel or counsel-substitute at disciplinary proceedings or failing to give the inmate notice before he is transferred. To determine when a substantive or procedural restriction is valid, the following test is applied:

THE GREAT DUE PROCESS BALANCING ACT

When Can Staff Impose a Substantive or Procedural Restriction?

Do not impose it	Impose it
Factors that weigh against imposing the restriction:	*Factors that weigh in favor of imposing the restriction:*
A. The restriction is substantial.	A. The restriction is minimal.
B. The restriction is dehumanizing.	B. The restriction is humane.

C. The restriction is disproportionate to the objective.	C. The restriction is proportionate to the objective.
D. There are less drastic ways of accomplishing the same objective without imposing the contemplated restriction.	D. This restriction is the only way to accomplish the objective.
E. If you don't impose the restriction, the risk to security is minimal.	E. If you don't impose the restriction, the risk to security is substantial.
F. If you don't impose the restriction, the risk to security is remote.	F. If you don't impose the restriction, the risk to security is immediate.
G. If you don't impose the restriction, the risk to security is unclear.	G. If you don't impose the restriction, the risk to security is clear.
H. It is administratively and financially feasible to come up with a plan that would not include this restriction.	H. The administrative and financial burdens of failing to impose the restriction are too great.
I. The person imposing the restriction cannot be trusted to do so objectively.	I. You can trust staff to impose this restriction fairly.
J. Common sense tells you not to impose the restriction.	J. Common sense tells you that this restriction is needed.

It is submitted that these factors go into a determination of when a restriction is reasonable or, in the language of the law, when the restriction is in accord with due process. It is, of course, not a simple matter of arithmetic in counting up the number of factors from A to J that are weighed on one side or the other. It was pointed out to the class that the relative weight of each factor must be juxtaposed against all of the other factors on both sides of the scale. If for example, the restriction is substantial, then this might tip the scale in favor of not imposing the restriction even though most of the other factors are weighed in favor of imposing the restriction. Each set of circumstances must be weighed differently whenever a restriction is involved—even if the restriction is called something else, such as "therapy." Labels do not control. The test is the actual presence of a restriction.

Conclusion

Corrections personnel have a difficult task before them. They must decide how to respond to the avalanche of corrections law. A response can be devised that is consistent with the law, but more important, that is consistent with their own process of equipping themselves to resolve conflict in the institutions. The law does not have to be conceived as alien; new policies instituted by the prisons do not have to be seen as "giveaway" programs. There is distinct parallel between how and why courts solve problems the way they do and how correctional institutions solve their problems on their own *if corrections personnel will carefully analyze and reanalyze what it is that they are doing in the light of some basic guidelines.*

CHAPTER FIFTEEN

TEACHING INMATE PARALEGALS
HEARING REPRESENTATION AND MEDIATION

SECTION A. HEARING REPRESENTATION

The content of the training in hearing representation will, of course, depend upon whether the institution (and/or the Parole Board) is willing to allow inmates to act as representatives at hearings at all. (In some situations, it may also depend upon whether a court has ordered an institution to provide counsel or "counsel-substitute" at particular hearings, e.g., disciplinary hearings.*) In this section, we will assume that representation in some form is allowed at any of the major hearings that occur within the institution: disciplinary, classification, parole release, parole revocation.

The temptation of the inmate paralegal will probably be to turn the hearing into a courtroom trial. His own criminal (and perhaps civil) trials will be vividly on his mind and they may become his model for the institutional hearing. To the extent that this might turn the hearing into an adversarial proceeding in which everyone is hostile and distrustful of everyone else, it should be avoided. The inmate paralegal must be aware of the danger of his ego replacing his common sense. In the inmate paralegal's anxiety to convince the inmate (who is the subject of the hearing) that he is passionately committed to the justice of the case, he may lose all objectivity and do more harm than good.

*At least 39 jurisdictions permit some form of paralegal representation at institutional disciplinary hearings. American Bar Association, Resource Center on Correctional Law and Legal Services, Survey of Prison Disciplinary Practices and Procedures, 11 (1974).

The core of representation training is teaching the difficult art of constructing and telling a coherent story. The representative must be able to trace back to the series of complex and perhaps conflicting events that led to the hearing and fit the pieces together before the hearing officer, committee or board.

Every story can be told chronologically from beginning to middle, to end. If the trainer constructs a hypothetical case involving two or three pages of "jumbled" facts and asks the inmates to construct the facts chronologically, he will probably discover that the trainees will not find the assignment easy. Nevertheless, the trainees must be drilled in the discipline of story telling from the perspective of a chronological reconstruction of facts.

Of course, fact investigation is a necessary precondition of coherent story presentation. Here the paralegal will want the opportunity to speak to any inmates or staff members involved in the case. The major difficulty in talking with inmates is the fear of peer violence when one inmate is suspected of "ratting" on another inmate. The trainer must be sure that he understands the code of behavior that inmates impose on each other. A class discussion of the realities of prison life at this level should produce a number of guidelines on when an inmate can be available as a "witness" in a hearing. The major difficulty in talking with staff members is the reality of human nature that we all tend to be defensive about the positions and actions that we have already taken. The challenge of the paralegal is to be able to talk with an individual in such a way that he is not threatened. A staff member must want to talk to the paralegal. The first step in achieving this objective is for the paralegal to be aware of the image that he is projecting of himself. The trainer should set up a number of role playing experiences in which one inmate plays the role of a staff member involved in a case and another inmate plays the role of a staff member who is investigating the facts of the case. After each role playing exercise, the trainer should do the following:

1. *Ask the trainees what was effective about what the paralegal did.*
2. *Ask the trainees what was ineffective about what the paralegal did.*
3. *Have the class formulate guidelines on the "do's" and "don'ts of investigation interviews.*

(On the techniques of role playing generally see Chapter Sixteen.)

Another important aspect of hearing representation is documentation and records. It is always wise to have available any written documents that are relevant to the case. The paralegal may, for example want to ask the institution for copies of records that are relevant to the case. This request may or may not be granted. The determining factor may be whether or not the paralegal has made an effective common sense and fairness argument as to why the document is needed. A demand for the records will almost always be turned down. Again, role playing can be very helpful in getting the inmates to focus on the problem involved in requesting records.

At the hearing itself, the paralegal must be able to distinguish between first hand or eye-witness observation and second hand or hearsay observation. This is so not because the hearing officer, committee or board will exclude any hearsay observations, but rather because the paralegal can usually strengthen his case when he makes sure that his "witnesses" emphasize the fact that they are speaking from first-hand observation, (when it is so), and he can usually weaken the case of the other side when he can point out that they are speaking from second hand observation.

No mention is made here of mechanics of the hearing (e.g., whether the paralegal can call witnesses; whether he can cross-examine witnesses on the other side, etc.) because of the great diversity of hearing structures that could exist. The trainer must first determine what structures are possible before training the paralegals in that structure, preferably through role playing.

SECTION B. MEDIATION

When a paralegal is involved in a mediation role, his central responsibility is to get the parties (1) to agree on what the issues are, (2) to agree to want to try to resolve the issues together, and most importantly, (3) to reach their own resolution through negotiation and compromise.

The theory underlying mediation is that people tend to carry out resolutions that they have had a major hand in shaping. Resolutions imposed (or pressured) on them by third parties tend to break down due to the absence of a commitment to make the resolution work. The great danger that the mediator must avoid is in preaching a resolution that comes from him rather than from the parties.

Where the inmate paralegals will be able to function as mediators within the institution is again not discussed here since it will be for the trainer to determine where, if at all, it is possible in a particular institution. Once the settings are identified where it is possible, the training objectives as briefly outlined in this section, can be carried out primarily through intensive role playing exercises.

CHAPTER SIXTEEN

ROLE-PLAYING: HOW TO USE IT EFFECTIVELY

Throughout this text, it has been suggested a number of times that role-playing is a useful technique in training paralegals. This chapter provides some guidelines to the trainer on how to employ this technique effectively.

Role-playing is a learning process wherein the participants act-out their responses rather then simply verbalize them in the classroom. As such, it is totally consistent with the general theory of training which emphasized the concrete and recoils at undue reliance on the abstract.

Before exploring this technique in detail, it may be helpful to look at the arguments against role-playing.

1. GAMES ARE FUN FOR THE FIRST THIRTY MINUTES, BUT SOON BECOME A DRAIN.

The argument here is that role-playing can create an initial atmosphere of interest and enthusiasm, but that it wears off relatively soon.

2. ROLE-PLAYING IS CHAOS.

Role-playing has a way of living a life of its own. The situation can quickly get out of hand. Tangents can dominate the proceeding.

3. THE EFFECT OF ROLE-PLAYING CAN'T BE EVALUATED.

So much happens during role-playing sequences that it's sometimes difficult to follow and often difficult to remember everything that has happened. One ends up with general impressions, rather than conclusions that you can get a handle on.

4. ROLE-PLAYERS CAN FOOL YOU.

While the trainer may ask a trainee to "act-out" a position rather than simply talk about it in the abstract, the role-player may in fact simply repeat his abstractions as an actor as opposed to "living" his position in a semi-real environment.

The short answer to each of these five criticisms is that they are addressed to ineffective role-playing rather than to the nature of role-playing itself as a learning device.

Role-playing can be viewed as a highly specialized learning technique or as something that we naturally do every day. According to the latter, role-playing is the adoption of a particular style, tone or manner in order to provoke someone into a desired response. Suppose that a married couple is thinking of buying a house. One of them finds a house and wants to make a convincing argument to the other member of the team to buy it. There are a number of roles that this spouse can adopt to make this argument:

SPOUSE WITHOUT DRAMA:	"I think we should buy this house."
SPOUSE AS MORALIST:	"God intended me to live in this kind of house."
SPOUSE AS FANATIC:	"If we don't buy this house, I'll kill myself."
SPOUSE AS ECONOMIST:	"Just think of the large interest deduction and resale value that this house has."
SPOUSE AS OPPRESSED MINORITY:	"I've just about had it. Everyone else has a fine home and I'm stuck without one. This house will solve everything."

The list, of course could go on and on. Which posture represents "the real" spouse? It's obviously difficult to determine. All of us are capable of a multitude of roles. When a paralegal consciously adopts a particular technique on the job (e.g., Be a Buddy.) he is role-playing. The assumption of roles (sometimes called masks) is a very common occurrence in social as well as in work settings.

A major problem with traditional classrooms is that they are divorced from real experiences. Everyone is rationalizing about everything. Role-playing is a major way to attempt to offset this.

The premise is simple: you get the trainee to commit himself to a particular situation; you set up a response to this position (via another role-player) and you watch to see what happens to the original position. Is the trainee defensive, consistent, confused, flexible, successful, etc.? You have this trainee analyze what had happened to him and to his position. What took place? What did he see about himself? What does he now think of his original position? If he had the same situation again, would he handle it differently? Why? These questions come alive for the trainee when he has committed himself through role-playing.

This is not to say that none of the above could have been achieved without the role-playing. The trainer could have simply presented a problem and asked the trainee "to talk about" the position he would take to respond to the problem. By incisive questioning, the trainer could have forced the trainee to be defensive, consistent, confused, flexible, etc. This approach (which is also a game), however, is less likely to take hold than the role-playing approach. It is perhaps impossible to prove this, except to say that the trainee is probably move involved in the role-playing than in the intellectual question-and-answer process, and that generally, people tend to learn more from situations that they are caught up in or involved in.

Does this mean that everything should be learned through role-playing? Certainly not. It would be false to argue that you can't learn something unless you have experienced it. Role-playing is most effective in the beginning stages of learning something new. It's a way to get things going. It's a way to involve the shy trainee. There is a distinct danger in overkill if the entire training program is nothing but a long series of role-playing sequences.

You may find that role-playing is of primary relevance to form rather than to content. It helps the trainee to look at his style, his approach: "how he is coming off." It also helps to teach "content", such as how to employ a particular oral communication skill, but it does so primarily by giving the trainee the opportunity to see the entire picture, to assess how he goes about using all his abilities and disabilities in problem solving. The discovery that can come through role-playing is primarily related to the type of person he is, and secondarily to the specific topic under analysis. Both style and topic (form and content) are crucial,

but it is not necessarily the case that both can be best dealt with through role-playing all the time.

The great appeal of role-playing, according to one view, is that it offers a forum for spontaneity wherein discoveries, otherwise unobtainable, are realized. From another perspective, it can be argued that role-playing is an intensely manipulative process wherein the trainer positions the trainee into accepting approaches that he does not believe. There is considerable truth in both of these statements. ROLE-PLAYING IS STRUCTURED OR CONTROLLED SPONTANEITY.

The obvious question that follows from this is: how can spontaneity be meaningful if it is controlled? Part of the answer is that role-playing is something less than free-association where, theoretically, anything goes. Role-playing does not go this far. There is a structure to role-playing, or there should be if chaos is to be avoided. The trainer needs to have in mind the direction he wants the class to take and not permit the role-playing sequence to take the class in another direction or to take the class in a direction that is too far afield from his originally intended path.

There is a difference, however, between controlling the topic or general area, and controlling what the trainees have to say about that topic or area. Role-playing that does the latter is obviously improper. If the way in which the role-playing is set up sends a message to the trainee that he is being asked to respond "naturally," then the role-playing is dangerously false. This is different from asking a trainee to play the role of an irate clerk, for example. He is being properly asked to take a certain posture as he reads it. He should be asked to give his interpretation of how an irate clerk would act in the circumstances provided. Here you are controlling the topic, but not the substance of the response. There can be valid spontaneity as to the latter even though the general direction of the discussion is begin controlled by the trainer.

Although over-control is a problem, a more pressing concern is when the trainer loses control. Suppose, for example, that the trainer wants to cover the problem of the paralegal's losing objectivity because he is taking the situation personally. He picks a trainee and creates a situation which he hopes will raise the issue. For example:

> The trainer plays the role of a school teacher. The trainee is asked to play the role of a parent. The teacher calls the parent and says ."Your son is having problems at school and I'm sure that it's because of his home environment."

The trainer is counting on the trainee to get angry and insulted in order to be able to discuss with the class the implications of anger and emotionalism generally in paralegals. To the trainer's chagrin, the trainee, as mother, responds thusly:

> "I would prefer not to discuss this with you. I'm going to discuss the entire matter, including your attitude, with the principal."

What is the trainer to do? This is not the response he was looking for. The response of the trainee raises another point: the chain of command technique in which the paralegal tries to get action by going to a supervisor, but the trainer did not want to deal with this topic at this time. The trainer either has to take some drastic steps to get the class back on track or he must decide whether or not to permit a new track to be taken. Unfortunately, most trainers freeze at this point. The value of staying with the chain of command topic is that the trainee came to it spontaneously and this is always an excellent time to deal with it. The problem, of course, is that the trainer may have wanted to cover other areas before he got to the chain of command point. Staying with it at this time would be disruptive of his overall training plan. The trainer must instantaneously balance the factors on both sides and make a decision.

If the trainer decides to stick to his original topic, then he has several options:

1) He could drop the first trainee and try to find a "better" response. He would ask someone else to respond to the same situation to see if he can get a response that will give him enough "meat" on the personality issue. He could keep switching until he finds the "right" response. If time is becoming a problem, he may simply ask the class as a whole: "Does anyone have a different response?"

2) Instead of trying to erase from everyone's mind what the original trainee said, he could try to get another trainee who has a response more along the lines of what he was looking for and ask the class to compare the two approaches.

3) As a final resort, the trainer could play the role of mother himself (play both roles); come up with a response which is very emotional and then ask the class if they see any problems with his approach.

Role-playing sequences can be quite varied:

1. You could run a sequence involving a very broad topic (e.g., disciplinary hearings), and a large number of role-players. Such a sequence could last an entire day.

2. You could pick a more narrow topic (e.g., investigation interviews) involving only one or two people and requiring a relatively short time to conduct.

3. The sequence could be so brief as to almost be parenthetical (e.g., the trainer is talking about a particular point; a trainee raises his hand and says "I don't see it that way;" the trainer stops the flow of his discussion and says to the trainee: "suppose you were in this situation and the following things happened, what would be your response;" the trainee responds; there is a brief discussion of the point and the trainee proceeds with his presentation. In this case, the role-playing would have taken only two or three minutes).

You will often find that the shorter, more direct role-playing sequences are the most effective. Don't use more than a few long, complex sequences. It's too easy for them to get out of hand.

With these background considerations in mind, we turn now to a number of specific role-playing techniques that may be of value.

1. MEDIA

It would obviously be highly beneficial to have access to video tape equipment. What better way to permit the trainees to see and "feel" themselves in action? Since such equipment would probably be impractical because of cost, a less expensive and less cumbersome tape recorder should be considered. A tape recording is often an excellent way to start off a training day. Use it for the first role-playing sequence. If you try to use it for every sequence, you will find that it will wear out its welcome and utility. It can be time-consuming to replay everything or even to find the spot on the tape that you want to replay.

2. FIND A FOIL

A cardinal principle in using role-playing effectively is to use it in a situation of conflict. One trainee says the best way to do something is by using a particular approach. Find out if anyone disagrees. If you find such a someone, then let each trainee role-play his approach in separate sequences involving the same fact situation and ask these trainees and the entire class to compare the two approaches. On any one point, there will almost always be a wide variety of approaches that the class would use. Ferret this conflict out and capitalize on it whenever possible.

3. TRAINING THE SECONDARY ROLE-PLAYERS

Too often in some of the smaller role-playing sequences the foul-up comes with the secondary role-players. The primary role-player is the trainee around whom the sequence is centered. He has made the point that the trainer wants to see acted out. Other secondary role-players, are selected to fill in the cast of characters. These secondary role-players can destroy the sequence by being in a totally different world. They need to be schooled on how to play their part, unless you have set up a very broad role-playing sequence in which you want the characters to take the sequence whenever they want to. In the smaller, more controlled sequences, however, you will want to prevent this by giving careful instructions to the secondary characters.

This danger in using secondary role-players is so acute that it is often desirable to have the trainer play the role of the secondary character so that he can be assured, at the very least, that the problem is presented.

4. Role-Reversal

After a role-player has acted out his position, ask him to play the role in a manner exactly opposite to the way in which he originally presented it so that he can gain an added perspective.

If the role-playing sequence involves characters on two ends of the spectrum (e.g., an inmate and a correctional officer), ask the trainee to play both roles in the fact situation. First the trainee plays one character; at the end of the sequence or in the middle of it, ask this same trainee to play the role of the"other side." Again there is considerable value in permitting the trainee to observe the problem from another dimension. Excellent topics for discussion can flow from such experiences.

5. Point!

You may not want to let every sequence be carried to its logical end. They can become too long and complicated. In some role-playing, you may want to try the "point" system. Give each non-participant in the role-playing sequence the right to raise their hand or say "point" at any time during the sequence. Encourage the class to intervene in this way. To get it started, the trainer may want to stop the sequence to make points of his own. By so doing, he will make clear to the class what the process is all about. (It may be that some of the comments made by the non-participant trainees will be so incisive that the trainer will want to consider inviting the person making the comment to come forward, take the place of the primary role-player and act-out the sequence along the lines of his comment or point.)

The trainer must make sure that the comments or points are crisp and relevant; windy speeches would disrupt the sequence. Flexibility is the key.

CHAPTER SEVENTEEN

TEACHING LEGAL RESEARCH

There are three essential elements in teaching inmate paralegals legal research:

1. *Providing Practical Exercises*
2. *Providing Readable How-to-Do-it Instructions*
3. *Dealing with Ambiguity*

1. PROVIDING PRACTICAL EXERCISES

The trainees must be given problem exercises that can be solved under the close supervision of the trainer. It is almost impossible to do this in a large class.

Of course, the training must be geared to the law books that are available or that soon will be available in the institution's law library. It would certainly make no sense to provide training in legal encyclopedias or digest, for example, if these books will never be found in the law library.

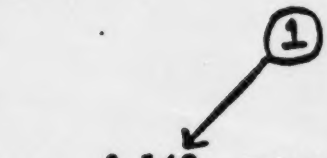
2. PROVIDING READABLE HOW-TO-DO-IT INSTRUCTIONS

Too often legal research texts are written as if the trainee already knows a lot about legal research; they are not basic enough. The trainer must carefully survey the literature that is currently available in order to determine how useful they might be for inmates. (Texts that could be considered are Cohen, J., Legal Research in a Nutshell, (West Publishing Co. 1971); Statsky, W., Legal Research, Writing, and Analysis for Law Students and Paralegals: Some Starting Points (National Paralegal Institute and Antioch School of Law, 1973). The latter text will become a chapter in Statsky, W., Introduction to Paralegalism: Perspectives, Problems and Skills which will be published in 1974 by the West Publishing Company.)

The trainer should contact the major law publishers (e.g., West Publishing Company, Lawyers Cooperative, Shepards Citations, Inc., etc.) and ask them to send him free copies of pamphlets which describe the step-by-step utilization of the books that they produce.

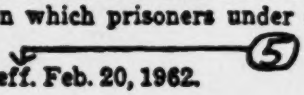
It may be that the trainer can interest a group of law students at a local law school to prepare a series of How-To-Do It and How-To- Use-It texts that could fit into an inmate paralegal training program for the state in which the institution is located.

The texts prepared for the trainees should break down the units of law books as narrowly as possible. For example, on the next page there is a photograph of a page in a book of statutes (McKinney's Consolidated Laws of New York, Correction Law, book 10B, 1968). The page has been separated into ten units indicated by the circled numbers and arrows from one to ten. Following such a page, there should be a description of what each number refers to so that the trainee can obtain the instruction in the context of actual legal research material.

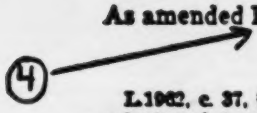


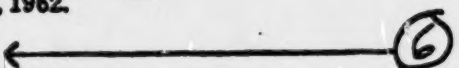
§ 146. Persons authorized to visit prisons

The following persons shall be authorized to visit at pleasure all state prisons: The governor and lieutenant-governor, commissioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction, members of the legislature, judges of the court of appeals, supreme court and county judges, district attorneys and every minister of the gospel having charge of a congregation in the town wherein any such prison is situated. No other person not otherwise authorized by law shall be permitted to enter a state prison except under such regulations as the commissioner of correction shall prescribe. The provisions of this section shall not apply to such portion of a prison in which prisoners under sentence of death are confined.



As amended L.1962, c. 37, § 3, eff. Feb. 20, 1962.

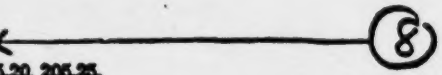




Historical Note

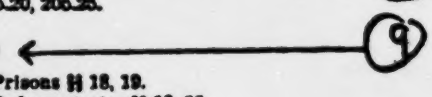
L.1962, c. 37, § 3, eff. Feb. 20, 1962, substituted "commissioner of general services" for "superintendent of standards and purchase".

Derivation. Prior to the general amendment of this chapter by L.1929, c. 243, the subject matter of this section was contained in former Prison Law, § 160; originally derived from R.S., pt. 4, c. 3, tit. 3, § 159, as amended L.1847, c. 460.



Cross References

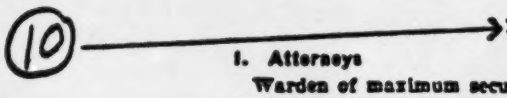
Promoting prison contraband, see Penal Law, §§ 205.20, 205.25.



Library References

Prisons ⇐13.
Reformatories ⇐7.

C.J.S. Prisons §§ 18, 19.
C.J.S. Reformatories §§ 10, 11.



Notes of Decisions

1. Attorneys

Warden of maximum security prison was justified in requiring that interviews of prisoners by attorney be conducted in presence of guard in room, in view of fact that attorney, who sought to interview 34 inmates in a day and a half, had shown no retainer agreements and had not stated purpose of consultations.

Kahn v. La Vallee, 1961, 12 A.D.2d 832, 209 N.Y.S.2d 591.

Supreme court did not have jurisdiction of petition by prisoner to compel prison warden to provide facilities in prison which would not interfere with alleged violation of rights of prisoner to confer in private with his attorney. Mummiani v. La Vallee, 1959, 21 Misc.2d 437, 199 N.Y.S.2d 263 affirmed 12 A.D.2d 832, 209 N.Y.S.2d 591.

Right of prisoners to confer with counsel after conviction is not absolute but is subject to such regulations as commissioner of correction not entitled to confer with their attorney privately within sight, but outside of hearing of a prison guard, when warden insisted on having a guard present in order to insure against any impropriety or infraction of prison rules and regulations during interview. Id.

3. Dealing with Ambiguity

The major frustration of legal researchers is that when they read sections of law books they have considerable difficulty in (1) understanding what they are reading and (2) applying what they are reading to the facts of the case before them. Ambiguity surrounds so much of what they do.

In teaching them to deal with this frustration, the first step is to make them realize that the ambiguity is often very natural because words are often ambiguous. Give them a statute and ask them how many questions they have about the statute. What is unclear to them. Take the following statute, for example:

> *"Chronic alcoholic means a person who, in consequence of prolonged excessive drinking, has developed a diagnosable bodily disease or mental disorder."*

There are a large number of questions that could be asked about this section which are not necessarily answerable simply by reading it:

1. What is meant by "chronic?"
2. Does "chronic" mean a lot of drinking?"
3. Could someone be an "alcoholic" without being "chronic?"
4. Does chronic mean that the person can't help himself from further drinking? Is the statute talking about an "addiction?" (What is addiction? Is it the same as drug addiction?)
5. Does "chronic" mean the same thing as "prolonged excessive drinking?" What is the relationship between these two parts of the statute? What do they add to each other?
6. Suppose someone drinks just a little, but is so weak, that he develops a diagnosable disease or mental disorder because of drinking. Could this person be a "chronic alcoholic" under the statute? Suppose that a person already had a disease or disorder before he started drinking and the drinking merely aggravated his sickness. Is he covered by the definition of the statute?

7. What is meant by "in consequence of prolonged excessive drinking?" Does the statute mean solely in consequence of "prolonged excessive drinking?" Is the statute just mentioning one of the causes or is it trying to exclude all other causes? (There is a rule of grammar that says that commas before or after a clause in a sentence are to be used when the matter in the clause is not essential to the meaning of the sentence. What do the commas mean before "in" and after "drinking?")

8. What does "prolonged" mean? Over a period of years? Suppose someone drinks night and day for two weeks. Is this "prolonged?" Is it a subjective test?

9. How many drinks is "excessive" or does "excessive" not refer to the quantity of drinks at all?

10. Can someone be a "prolonged" drinker without engaging in "excessive" drinking? What is the relationship between "prolonged" and "excessive?" Is it of any significance that the statute did not say prolonged *and* excessive drinking? Is it of significance that the statute did not say prolonged *or* excessive drinking?

11. What is "diagnosable?" Does it mean that a doctor (any doctor?) can observe the disease or disorder?

12. Could "diagnosable" mean something observable by a layman?

13. Does "diagnosable" mean that there must be some scientific test available which can conclusively say that the disease or disorder is present? Or does it simply mean someone's opinion?

14. What is a "bodily disease?" Is a cold a disease?

15. What is a "mental disorder?" Does it mean that there must be such disorder that the person would have to be hospitalized?

16. Suppose that a person has a "mental disorder" (e.g., insomnia), but is able to function on his job and at home otherwise. Does the statute mean to cover him?

17. Suppose that a rich man has a "bodily disease" or a "mental disorder" as a result of "prolonged excessive drinking," but is under his private doctor's care night and day. Can he argue that he is not a "chronic alcoholic" because the statute was not meant to cover individuals in his situation?

18. Suppose that one spouse coerces another spouse to drink excessively over a prolonged period and a disease or disorder develops. Is this spouse a "chronic alcoholic?" Does the statute mean to cover involuntary alcoholics?

Once the trainees have arrived at the point at which they are no longer frightened by ambiguity, the next step is to teach them to take advantage of the ambiguity, i.e., to teach them to argue that the words of the statute, case, regulation or constitution might be interpreted in a way which is favorable to the client being served. Suppose, for example, that a paralegal has a court opinion before him and he wants to argue that the result of the opinion does or does not apply to the facts of his client. It is unclear or ambiguous as to whether or not the case applies. He deals with this ambiguity by being taught the principle of analogy. The remaining portion of this chapter provides an example of training material that could be handed to the trainees to teach them this principle.

Analogy means similarity. Riding a car at 40 miles per hour is analogous to riding in a car at 30 miles per hour. The experience is similar. Is riding in a bus at 40 miles per hour analogous to riding a motorcycle at 40 miles per hour? Clearly there are similarities. Are the differences so substantial that you would conclude that similar conclusions cannot be drawn from both experiences? The extent to which something is analogous to something else is almost always a matter of degree. When someone says, "they are analogous," he is saying that the situations being compared are similar enough to warrant a similar result in both instances.

But just as beauty is in the mind of the beholder, so it is with analogies. It is not necessarily cynical to say that one tends to conclude that situations are analogous based upon one's need to find analogies. Legal researchers have a great need to find analogies.

Let's look at a hypothetical court case and see how a researcher might try to analogize it to the facts of his problem. Following this analysis, there are two exercises in which the same kind of reasoning will be needed.

YOUR FACTS	THE CASE: A v. B
Client sees an ad in the paper announcing a sale. He goes to the back of the store and falls into a pit. There was a small sign that said "danger" near the pit. The client wants to sue the store owner for negligence. The law office assigns a paralegal to research the case. The researcher finds the case of A v. B and wants to argue that is analogous.	A is looking for an address. He is walking down the street. He decides to walk into an office building to ask someone for help. While walking down the corridor, he slips and falls on wet floors. There was a small sign in the corridor that said "Wet Floors" which A did not see. A sues the owner of the building (B) for negligence. The court held that the owner was negligent.

The researcher first reads the case of A v. B thoroughly to get all the facts. His arguments run thusly: Both his client and A were in a public facility at the time. The danger of the wet floor is similar to the danger of the pit. In fact, the pit is more dangerous. The "wet floors" sign in A v. B was inconspicuous as was the "danger" sign near the pit. Therefore if the A v. B court had the facts of the client before it, it would have decided the case in the same way, i.e., it would have found the store owner negligent.

Suppose that you were conducting legal research for the store owner in the pit problem. You are asked to research the case. You come across A v. B. Your job is to argue that it does not apply, i.e., that it is not analogous. You first argue that wet floors are more dangerous than pits. Wet floors are usually at the very front of the building where everyone will come into contact with them. This is very different from pits at the back of a store where few people are likely to go. You argue that the "danger" sign is much more likely to catch the eye of someone than a wet floor sign. Furthermore, the "danger" sign was near the pit, whereas the "wet floors" sign in A v. B was small and not as prominent. Therefore, A v. B does not apply, i.e., it is not analogous.

Problems

1. YOUR FACTS: Client has applied for a driver's license. It was denied under a department regulation which states that no license shall be issued to people of "unfit character." The client served five years for burglary and was recently released.

THE CASE: Plaintiff was denied a barber's license under a regulation that said that the agency has the discretion to issue licenses only to applicants that are "not morally unworthy." The plaintiff had spent six months in a mental institution. The court held that the agency was wrong in denying the plaintiff the license. First, argue that this case is analogous to your facts. Second, argue that the case is not analogous.

2. YOUR FACTS: Client wants to sue a merchant for a breach of warranty. The client purchased a refrigerator and the dealer who told her that it was "the best damn machine in the city." When the client got the refrigerator home it worked, but she was not totally satisfied with it. A neighbor of the client bought a refrigerator for about the same price and it worked much better. The neighbor bought it in the same city. The client is claiming that she was given a warranty by the dealer that the machine was the best one in the city and it wasn't, due to the comparison she made between hers and her neighbor's. The dealer argues that it was not a warranty. He was merely "puffing" or giving sales talk which everyone knows is not a warranty.

THE CASE: Plaintiff sued a used car dealer. The dealer told the plaintiff that "this car is in good shape." Two days after the plaintiff purchased the car, it broke down. Plaintiff sued the dealer for breach of warranty. The defense of the dealer was that his language on the shape of the car was puffing. HELD: The dealer had given the plaintiff a warranty and breached it. First, argue that this case is analogous to your facts. Second, argue that it is not analogous.